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REGIONAL RESOURCE STEWARDSHIP COUNCIL MEETING

3

OCTOBER 10, 2008

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VOLUME II OF II

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LOCATION:

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TENNESSEE VALLEY AUTHORITY

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400 WEST SUMMIT HILL DRIVE

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KNOXVILLE, TENNESSEE 37902

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1 MEMBERS OF THE REGIONAL RESOURCE STEWARDSHIP COUNCIL

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3 MS. JOANNE LAVENDER (FACILITATOR)

4 MR. TOM LITTLEPAGE (COUNCIL CHAIR)

5 MR. KENNETH RAY DARNELL

6 MRS. JEAN KELLEMS ELMORE

7 MR. BILL FORSYTH

8 MR. MICHAEL GOODMAN

9 MR. GEORGE KITCHENS

10 MR. W. C. NELSON, JR.

11 SENATOR ARTHUR ORR

12 MR. WES ROSENBALM

13 MR. ROY G. (JOE) SATTERFIELD, JR.

14 MR. RUSSELL TOWNSEND

15 MR. THOMAS R. VORHOLT

16 MS. CAROL DOSS

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2 TENNESSEE VALLEY AUTHORITY DESIGNATED FEDERAL OFFICER

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4 MS. ANDA A. RAY, DFO
5 SENIOR VICE PRESIDENT, OE&R
6 TENNESSEE VALLEY AUTHORITY
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1 P R O C E E D I N G S

2 COUNCIL CHAIR MR. TOM LITTLEPAGE: I

3 think we're going to go ahead and get started. So I

4 will go ahead and call the meeting to order.

5 I don't think yesterday I officially

6 declared a quorum. So procedurally I probably was a

7 little lax, but today I can officially declare a

8 quorum. Today matters.

9 If you will look at your agenda for

10 the day two in the section of your notebook, we're

11 going to make some minor changes with regards to that

12 agenda. We're going to try to get to a presentation

13 that we didn't get to yesterday and eliminate the

14 breakout sessions.

15 And then depending on the public

16 comment period, at this time we don't have anybody

17 requesting to make a public comment, and so that will

18 allow us to get to our recommendations section of the
19 meeting and hopefully allow people who need to get
20 out of here early an opportunity to vote on that and
21 let's finalize the recommendations with this
22 difficult issue based on what we saw today.

23 Again, I want to officially thank the
24 TVA staff for the work -- there was a lot of work
25 that went into the preparation of that field trip
1 yesterday. It was very informative certainly on my⁵
2 behalf to see some of those issues that y'all are
3 wrestling with on a day-to-day basis. It's a
4 difficult position that y'all are in and trying to
5 figure out that balance between being responsible
6 stewards and being compassionate. It's a hard thing
7 to do.

8 So I think I will turn it over to
9 JoAnn to get us started this morning. Any questions
10 or comments from anybody before we get started?
11 Okay.

12 FACILITATOR JOANNE LAVENDAR: What we
13 would like to do first is to look at the document
14 that you have in front of you which summarizes the
15 comments that you gave to us yesterday. The items

16 that are underlined are basically the recommendations
17 that you gave us. The other areas are more
18 questions.

19 If you would, just take a quick look
20 at this and see if you see anything in the underlined
21 area that we need to revise.

22 MR. GEORGE KITCHENS: I had one thing
23 from yesterday that after I thought about it I
24 wondered about. There was a place in the
25 presentation that said that maybe parks and some of
1 the campgrounds would be closed for two weeks for --
2 to allow inspections, would it not make more sense to
3 inspect while the campground is open if you really
4 want to get a true sense of how it's being operated?
5 Just a thought.

6 DFO MS. ANDA RAY: And some of that
7 is -- that's a good idea. Some of it is kind of
8 psychological that when you close the campground, I
9 mean, everybody has to get out. So you have an
10 opportunity to clear them out. It's kind of like
11 that no-contractor period.

12 FACILITATOR JOANNE LAVENDAR: So
13 there's certainly some things you can observe when

14 it's open that you couldn't observe when it's closed?

15 MR. GEORGE KITCHENS: Exactly. The
16 day-to-day litter, the cleanliness, the tidiness of
17 the facilities. Are they mowing the grass?

18 You know, shoot, if I knew when my
19 two-week closure was, I would probably the day people
20 were leaving get it spiffed up a little bit.

21 FACILITATOR JOANNE LAVENDAR: All
22 right. Any other things that you see we need to
23 change or that you want to add?

24 MR. KENNY DARNELL: Have you ever
25 considered having kind of a summer camp, a week or
1 two weeks of intensive training for your campground⁷
2 operators?

3 FACILITATOR JOANNE LAVENDAR: Okay.
4 Consider a training session for them?

5 MR. KENNY DARNELL: Uh-huh.

6 FACILITATOR JOANNE LAVENDAR: Okay.
7 Any other revisions or comments? Have you had time
8 to read it all?

9 COUNCIL CHAIR MR. TOM LITTLEPAGE: I
10 think the silence means everybody is pretty happy
11 with it.

12 FACILITATOR JOANNE LAVENDAR: Okay.

13 Good. We will move into Vickie's presentation that
14 we didn't get to yesterday on compliance strategy.

15 MS. VICKIE ELLIS: Thank you. I
16 appreciate the opportunity to talk to you some more
17 today about stewardship compliance strategy.

18 I guess the best laid plans that
19 worked out yesterday where we actually saw the events
20 before we talk about them might work out well because
21 at least you have a visual of what some of the things
22 are that we're going to go through here this morning.

23 What is stewardship compliance at TVA?

24 We look at this in four different
25 buckets. We look at land use compliance, Section 8
1 26(a), which refers to part of the TVA Act. So
2 that's the compliance issue related to if you want to
3 apply for a boat dock or you want to apply for a
4 marina or a boathouse or having a tree cut in your
5 property, that's TVA property, contract compliance
6 issues and campground compliance, which is one of the
7 areas that you did see yesterday.

8 Why is it important for us to look at
9 this?

10 Well, hopefully you saw yesterday why
11 it is important for us to keep the public lands as
12 they should be for the public and not let some of the
13 issues that you saw yesterday get out of control. It
14 does reflect poorly on TVA's business image.

15 We have a land policy that you were
16 very instrumental in giving us feedback on approval
17 for that land policy, and we want to make sure that
18 we maintain that policy. The public perception of
19 TVA, once one of those really large boat docks goes
20 in there, everybody else down the way says, oh, I can
21 have one too. TVA didn't make them take theirs out.
22 So then you have three and four along a particular
23 cove or shoreline. It ensures a more effective
24 policy application across the Valley, and in some
25 cases it is an environmental risk that we are trying
1 to reduce. 9

2 You saw an alignment chart yesterday
3 in many of the presentations, John Myers' and Buff's.
4 We also have an alignment with TVA's strategic plan,
5 the environmental policy and framework, and you see
6 that down under there we have a bubble for
7 stewardship compliance. So we're trying to align

8 these strategies and keep them at the forefront of
9 our organization reviews.

10 How do we discover V&E's?

11 We do shoreline inspections. We
12 talked about this on our boat yesterday, and
13 hopefully you did on the other one. Our watershed
14 teams go out every year at least once a year doing
15 shoreline inspection. They look at the records that
16 they have where we have approved a particular boat
17 dock or boathouse and they see what's actually on the
18 shores.

19 Sometimes if they think the
20 measurements might look a little bit off, they will
21 actually jump out and do some measurements. If they
22 do have find things out of compliance, then they
23 actually post those boat docks or whatever is out
24 there that they are posting, and then the homeowner
25 calls into the TVA watershed team office. So
1 shoreline inspection is probably the largest way that
2 we get feedback.

3 People love to rat out their
4 neighbors. So we find a lot of people calling TVA
5 watershed team offices saying, oh, somebody is making

6 a boathouse bigger than what you permitted or theirs
7 is bigger than mine or somebody is cutting a tree and
8 you need to go check it out. It may be their own
9 trees, but we go check it out just to make sure they
10 are now our trees.

11 Due diligence for land plans, we have
12 land plans on our reservoirs around the Valley. As
13 we're out there looking at how those shorelines
14 should be zoned, we actually find violations and
15 encroachments that way. Campground compliance, I
16 think we have talked about that one.

17 Our TVA police is out there on a daily
18 basis on the reservoir and they find issues, as well
19 as other TVA organizations such as river operations
20 when we look at encroachments in the navigable
21 waterways.

22 Somebody asked me yesterday how many
23 you have. The next chart shows a lot of issues. You
24 see a lot of categories, and the final number at the
25 bottom says 4500, I say very quietly. It grows
1 everyday. We cannot hope to look at 4500 this year.

2 We started a staff of two this year. They wave at me
3 in the back. We have accomplished a lot since we

4 started with this group. So we do -- are putting a
5 lot of concerted effort on those that are higher
6 level and higher risk for TVA.

7 That is a list of some examples. We
8 have homes that are on TVA property. We have
9 swimming pools on TVA property, certainly the
10 oversized boathouses. We have mobile homes. In
11 Kentucky we have a lot of stilt houses that are built
12 in the floodplains. So you name it and you can
13 probably find it on this list somewhere.

14 COUNCIL CHAIR MR. TOM LITTLEPAGE: You
15 said you have in-ground pools?

16 MS. VICKIE ELLIS: Yes.

17 COUNCIL CHAIR MR. TOM LITTLEPAGE: You
18 said in-ground pools on TVA property?

19 MS. VICKIE ELLIS: Yes. And we have
20 above-ground pools. We like the above-ground pools.
21 If we have to have one, we'd choose the above-ground.

22 Our general counsel loves to talk to
23 us about the liability when we find an in-ground
24 pool. Sometimes it's just part of an in-ground pool.
25 It will just be a corner of it. So you can have your
12
1 own little corner.

2 So how do we prioritize all of these

3 4,000 or so?

4 And you saw yesterday just a brief
5 snippet of what we have out there. Certainly when
6 you're in the flood control and water quality issue,
7 those are high priority for us. These are in no
8 particular order.

9 Environmental impacts. Certainly
10 non-compliance with TVA policies and procedures,
11 financial impact. Liability risk to TVA, certainly
12 in the case of the swimming pools. The impact to
13 TVA's reputation and trust. While it's at the bottom
14 of that list, we are here to make sure that the
15 public has trust in TVA as a federal agency.

16 I'll move to the pictures because
17 pictures, as you know, probably are better to help
18 you understand what we're talking about. The one
19 here is a campsite. We said yesterday it's okay to
20 camp for 14 days and that's fine, but when it turns
21 into four or five months and you have a roof put on
22 your tent and you have your canoe pulled up to your
23 dock that you have created with your tent. There are
24 windows that you can't quite see in this picture, but

25 the gentleman was getting ready to add windows to his
13
1 little home there. There is a grocery cart there in
2 the water that you keep your fish in. So it was
3 becoming a little bit bigger than a 14-day camping
4 site. That one is on Guntersville.

5 We talked yesterday about campsites,
6 and you saw a good camping facility yesterday, one
7 that was well managed. Buff had the opportunity last
8 year, I guess, to close -- make the first closure of
9 a TVA campground. We did close that one on a safety
10 violation, but there was other violations there as
11 well.

12 People come into the campsites and
13 they build their deck. They add lawn art. They add
14 their propane tanks. They put up mailboxes and then
15 the school bus starts running through. So there are
16 lots of things that makes those more permanent
17 camping facilities than temporary.

18 You saw tree cutting yesterday. I
19 don't know if it's the time of year, but every week I
20 get a new tree-cutting issue. People are cutting
21 roads. They are cutting a different view shed so
22 that they can see the water from their home. They

23 are selling property. They are cutting across the
24 street from vacant lots and putting up for sale signs
25 and increasing the property value from a \$100,000 lot
1 to a \$200,000 lot now that they cut the TVA trees¹⁴
2 down. I believe that one happened on Guntersville.

3 The picture you see here is Melton Hill.

4 MRS. JEAN ELMORE: Vickie.

5 MS. VICKIE ELLIS: Yes.

6 MRS. JEAN ELMORE: I promise we will
7 not cut that tree.

8 MS. VICKIE ELLIS: I will hold you to
9 it. Please take a picture and send me your tree.

10 MRS. JEAN ELMORE: The next time we're
11 at Pickwick I will do that.

12 MS. VICKIE ELLIS: I am going to count
13 it as a voluntary compliance.

14 MRS. JEAN ELMORE: We did ask
15 permission.

16 MS. VICKIE ELLIS: I know you did,
17 and you are complying.

18 MRS. JEAN ELMORE: And they told us no
19 and we did not cut it. That's been several years
20 ago. So it's still there.

21 DFO MS. ANDA RAY: Thank you, Jean.

22 We appreciate the tree.

23 MS. VICKIE ELLIS: We will get you a
24 plaque.

25 This is a situation on Kentucky. We
1 spoke about this yesterday. I guess it was in the ¹⁵
2 car, Anda, you were talking about this one to our
3 group.

4 In this picture you can see that if
5 you look at the fourth lot number, lot No. 84 which
6 is at the far right, this homeowner owns just a
7 little bit down that way where you first see the rock
8 starting. There's also a lamp post there if you can
9 see it in your picture there.

10 What they did, in addition to making
11 their own boat launch facility, they created one for
12 the whole cove. They came on down to the water's
13 edge. I don't know how many feet this launching ramp
14 is. You can get two vehicles in there side-by-side.

15 What they have done is they have added
16 lots of rock and riprap, but they have cut off the
17 access, the neighbors believe, to the front of their
18 property. You will see lots 81 and 82 and 83 now

19 have this launching ramp in front of them as well.

20 So that is problematic and that is one we're working
21 on this week with our attorneys.

22 MR. KENNY DARNELL: Where is that?

23 MS. VICKIE ELLIS: It's on Kentucky.

24 MR. KENNY DARNELL: Can you
25 specifically divulge that?

16

1 MS. VICKIE ELLIS: If I knew it I
2 would, but I don't know. I have been there.

3 The next one is Cherokee. This is
4 very similar to what you saw yesterday. This family
5 has a mobile home, a dog lot, an outbuilding, a dog,
6 lots of cars on TVA property. They do have their own
7 property, which is immediately in front of the mobile
8 home, but there's nothing on their property. It's
9 all back on TVA. That one we are taking forward to
10 litigation.

11 We talk about people who build boat
12 docks and then ask permission after the fact, that's
13 the case with this particular picture that you're
14 looking at. It's on Norris Reservoir. I mentioned a
15 minute ago that when one homeowner builds something
16 like this and TVA has not taken action on this, then

17 you get three or four more, and that's exactly what's
18 happened in this situation.

19 Everything you see in that picture is
20 actually on TVA property. It's not just the floating
21 dock. It's also the stairs and the land-based deck.
22 We have three more that have cropped up right beside
23 these. If we took a broader picture you would see a
24 total of four. This one has been appealed up to our
25 Board of Directors, and they supported the fact that
17
1 it needed to be removed.

2 We do have an appeal process. If
3 someone is denied, Jean, the ability to cut a tree or
4 build a boat dock, they can appeal that decision by
5 our watershed team up to Anda's level. If they
6 disagree with Anda's decision, they can appeal to
7 Mr. Kilgore. If they disagree with that decision,
8 they can also appeal to our Board.

9 This is a picture of an oversized
10 boathouse. It's not their house, it's their
11 boathouse. We're going to talk more about these
12 issues in just a minute when Nancy Greer -- we're
13 going to collapse to breakout sessions and just do
14 one large breakout session here in the room, but this

15 one was permitted in 2004 for a little over 1800
16 square feet. When it was actually built it was over
17 2900 square foot. So that's a large one out there,
18 and that's something you would not want to
19 proliferate up and down the shore.

20 We mentioned swimming pools a minute
21 ago. This is again on Kentucky. This is a situation
22 where part of the house -- only part of their
23 swimming pool, the corner of it, the large corner.
24 They have a water discharge on TVA. They have a deck
25 and gazebo that's on TVA property.

18

1 This woman is trying to sell this
2 house. She's very cooperative with us and is trying
3 to either get a sufferance or -- actually, we're not
4 going to suffer the swimming pool, but make the
5 changes that need to be made so that she can sell the
6 property.

7 DFO MS. ANDA RAY: Do you want to
8 mention why swimming pools are such a problem for us?

9 MS. VICKIE ELLIS: The liability of
10 swimming pools is a real problem for us. And we have
11 heard estimates upwards of \$14 million if there's an
12 accident in that particular -- in someone's swimming

13 pool that will suddenly not be on their property and
14 all on TVA, I'm afraid. So then they would be suing
15 us for any liability.

16 Kelly, do you have anything else to
17 add?

18 MS. KELLY LOVE: No.

19 MS. VICKIE ELLIS: So how do we
20 resolve these?

21 We obviously want people to have
22 voluntary compliance. We want to work with the
23 property owners in these situations and try to reach
24 voluntary compliance. We don't want to go to court
25 on all of these.

19

1 Our success record is going to be
2 based on how many we're able to do from a voluntary
3 standpoint, but we do have a lot of options that you
4 see on this list to aide us in that.

5 Removal of the structure sometimes is
6 what's going to have to happen. We can suffer, we
7 can do a sufferance agreement, but it doesn't resolve
8 the issue necessarily, but the homeowner is paying us
9 for an annual fee each year. We can do deed
10 modifications, a monetary settlement, a site

11 restoration.

12 In the situation you saw yesterday
13 with the timber cutting, we want those sites
14 restored. We can revoke permits and certainly
15 involve TVA or local police. The last resort will be
16 taking legal action on some of these.

17 It's a big responsibility and we
18 certainly want your -- I am obviously doing something
19 wrong.

20 DFO MS. ANDA RAY: Click it the other
21 way.

22 MS. VICKIE ELLIS: What are the next
23 steps?

24 We took you on a tour yesterday. We
25 would like to get your advice and guidance for us and
1 the TVA Board today now that you have seen these and
2 you have seen the presentations. Hopefully you will
3 be willing to give us that feedback today so that we
4 can include it in presentations that we're going to
5 be making to our Board committees in the near future.

6 We're going to finalize a methodology
7 with all of these to prioritize. We have to have
8 some smaller list to work from. We're kind of

9 estimating 30 to 40 of these a year is something we
10 can tackle realistically.

11 We have to work through resolution
12 options on every single one because really there are
13 no two alike. You can't just pull out, oh, this is
14 what we do on swimming pools and this is what we do
15 on this, because the situations are going to be
16 different and the size of the boathouses are going to
17 be different, et cetera.

18 We're going to pursue resolution of
19 those top priority ones. We're going to communicate.
20 This is the tricky part. We have got to communicate
21 with the public what we're doing. Someone mentioned
22 yesterday that the more of these activities that the
23 public sees you taking you're probably going to have
24 more voluntary compliance over the Valley.

25 I will say that as we tackle these 21
1 that we're not going to concentrate on any particular
2 area of the Valley. We have plenty of these to go
3 around. So we will be looking at them across the
4 Valley so that there's no one reservoir that says,
5 oh, they are just picking on me.

6 So we do have a public communication

7 plan. You're welcome to give us input on that, we
8 would love to have it, and then measure our results.

9 Any questions for me before Nancy goes
10 into a little bit more detail on one of our issues?

11 Okay. Nancy Greer is the manager of
12 our stewardship compliance efforts, and she's going
13 to walk you through one of the scenarios. We were
14 going to go into breakouts and do four. We're going
15 to skip that in the event that we can get your
16 questions this morning or get your feedback this
17 morning and then we will just walk through one of
18 those issues with you.

19 COUNCIL CHAIR MR. TOM LITTLEPAGE: All
20 right. While you are transitioning I just wanted to
21 welcome Russell for making it. We appreciate you
22 taking the time to make this. Welcome to the
23 meeting.

24 MR. RUSSELL TOWNSEND: Thank you. I'm
25 sorry I missed yesterday. I had business in
22 Cherokee. I'm delighted to be here with y'all today.

2 MS. NANCY GREER: Okay. Good morning,
3 everyone. Before I start I would like to also
4 recognize Bob Cavender, he's sitting in the front row

5 on the back seat, and he's the other half of the
6 compliance team. He and Buff were largely
7 responsible for tour that you went on yesterday.

8 If you will notice in your notebooks,
9 we had intended to do four breakout sessions to look
10 at four different issues that are important to us.
11 The others were campgrounds, tree cutting, and
12 residences on TVA property, but because you saw those
13 on the ground yesterday, and in the interest of time,
14 we have picked the fourth scenario, which is Section
15 26(a) compliance.

16 Section 26(a) for those of you who may
17 not be familiar is the section of the TVA Act that
18 deals with flood control, navigation, et cetera, and
19 it's where we issue piers and boathouses up and down
20 the river. It is on this issue that we anticipate if
21 we start to do some compliance activities that we
22 will get the most public input on -- we issue
23 approximately 3,000 permits a year, and as Vickie
24 mentioned, we do annual compliance inspections on
25 those permits.

23

1 I think this one -- okay. I just went
2 backwards. Steve, can you get his?

3 In particular, on 26(a) compliance we
4 want to focus on boathouses that are not constructed
5 as we permitted them, and that means they are either
6 larger than what has been permitted or they have a
7 covered second story on them. Those are the two most
8 common items that we find when we're out doing
9 shoreline inspection on boathouses.

10 So whenever you start to look at
11 compliance, the first thing you have to ask are what
12 are the rules?

13 So I would like to briefly touch on
14 TVA has a Board approved policy under the shoreline
15 management initiative that was put in place in 1999.
16 And Kenny, we talked a little bit about this
17 yesterday and the impacts to, you know, deeded rights
18 and who can have them. Excuse me.

19 It also covered the size of
20 boathouses. You can have a boathouse. If you're
21 eligible, you can apply for one up to 1,000 square
22 feet. That was what came out of it. If you are in
23 an area where you have a pre-existing subdivision at
24 the time the rule went into place, you can apply for
25 a waiver based on prevailing practice in the

1 subdivision. We do try to keep those up to 1,800
2 square feet as a maximum.

3 This is the boathouse Vickie had in
4 her other presentation, and we won't stay too long on
5 this slide. Basically it has been permitted at
6 approximately 1600 square feet. That's the
7 prevailing practice in the subdivision. This one was
8 permitted for 1800 square feet. When they measured
9 it earlier this year, they measured over 2900 square
10 feet. This one is on Guntersville. This one is also
11 on Guntersville. Guntersville has a lot of the
12 larger boathouses.

13 This one, again, it's actually in the
14 same subdivision. The prevailing practice is
15 1600 square feet. It was permitted for 1600 square
16 feet, and when they measured this one it measured out
17 to 3400 square feet.

18 The next one is on Wilson Reservoir.
19 The prevailing practice in this subdivision, and by
20 prevailing practice they determine that by the
21 average size of the boathouse that they permitted
22 over time, is 972 feet or just under 1000 square
23 feet. The boathouse was permitted for 1500 square

24 feet. This one measured to over 2200 square feet
25 when they found this one in 2004.

25

1 On the next slide we have a covered
2 second story boathouse. TVA's rules under SMI allow
3 for a deck on the second story of your boathouse, but
4 they do not allow for it to be covered with a
5 permanent cover.

6 The reason for that is over time years
7 ago we had a problem with people putting living
8 quarters in boathouses. They would enclose them and
9 you would find people living in them. So we decided
10 that was not appropriate, and in SMI we said no
11 covered second story. So it's actually part of the
12 Board approved policy that we do not allow them.

13 A lot of people ask the question of
14 what's the big deal about a covered second story, and
15 it was just where they chose to draw the line in the
16 sand at the time to prevent living quarters in
17 boathouses.

18 On the next slide, I put this picture
19 in here just to show you an example of the -- this is
20 an older one that's still out there but where they
21 have actually enclosed -- completely enclosed that

22 covered second story.

23 Okay. On the next slide. So why this
24 is important?

25 Oversized facilities violate a TVA
26 Board approved policy. It's against the rules.
1 TVA's managed -- shoreline management policy says you
2 can't have it, but I think the larger issues are
3 managing the density and the size of structures is
4 important in maintaining navigation access. In some
5 of the areas where you have a narrow channel you want
6 to make sure that you control the size of those
7 boathouses so that you don't have navigation issues.

8 It also helps to maintain the value of
9 the property. That value can come from, you know,
10 the beauty of the area, property values, natural
11 resources, they all impact that economic development
12 asset for that.

13 Okay. That is the -- an overview of
14 the issue. Are there any questions?

15 COUNCIL CHAIR MR. TOM LITTLEPAGE: I
16 have got one. In the areas where you jointly permit
17 with the Corps, do they have a role in this process
18 in terms of how these 26(a) permits are -- because my

20 understanding is this is a joint permitting process.

21 MS. VICKIE ELLIS: Anytime anybody
22 submits a 26(a) application for a boathouse, it is a
23 joint permit between TVA and the Corps. TVA does the
24 field work on those. Then once we have given
25 approval or disapproval, the Corps also has a copy of
1 that at the time. 27

2 COUNCIL CHAIR MR. TOM LITTLEPAGE: So
3 have they expressed any position on some of these
4 issues?

5 MS. NANCY GREER: Not that I am aware
6 of.

7 DFO MS. ANDA RAY: And they look to us
8 as the lead agency.

9 MR. GEORGE KITCHENS: My question was
10 just how do you measure the square footage? Do you
11 look at the total footprint with the dock and deck
12 around boathouse?

13 The reason I was asking, at least from
14 a couple of the pictures with the square footage
15 described, the actual house itself didn't look that
16 large. So I was wondering if you counted the deck or
17 dock area or how do you determine that?

18 MS. NANCY GREER: That's a great
19 question. We determine it by the actual footprint of
20 the facility. We don't count the walkway out to the
21 facility. So if you can picture in your mind either
22 a square or a rectangle around the largest points on
23 four sides, we use that to calculate the square
24 footage.

25 MR. GEORGE KITCHENS: Okay. Thanks.

1 COUNCIL CHAIR MR. TOM LITTLEPAGE: So²⁸
2 the illustration on page 5 where you have got this
3 boathouse, is that essentially the square footage of
4 that top deck?

5 MS. NANCY GREER: It would actually
6 go -- I think it's the one back from that one, Steve.
7 It would actually go a little farther out than the
8 top deck because you will notice that bottom deck
9 where they actually have boat slips I believe extends
10 just slightly beyond that. So it's the widest point
11 on all four corners. Then you just make your square
12 triangle and that's how you calculate that.

13 COUNCIL CHAIR MR. TOM LITTLEPAGE: And
14 so the second story doesn't calculate into it?

15 MS. NANCY GREER: No, the second story

16 does not factor into that.

17 FACILITATOR JOANNE LAVENDAR: Are
18 there any other questions on this one?

19 Okay. I think what Vickie wants to do
20 now is go back through the four questions or do we
21 have time?

22 FACILITATOR JOANNE LAVENDAR: I think
23 it's the next presentation of discussion questions.
24 In your book it's under discussion questions. It
25 includes the questions that Vickie posed at the
1 beginning of hers. This is all the questions for the 29
2 Council.

3 Basically what we want to do is get
4 your recommendations that we would pass on to the
5 Board as your recommendations. The first one is --
6 and there are several factors that are used by TVA in
7 determining their methodology of prioritizing the
8 violations. As Vickie said, they can't all be
9 handled at once.

10 So what should be the priority in
11 terms of addressing violations?

12 The current factors that are being
13 taken into account are flood control, water quality,

14 navigation impact, environmental impacts,
15 noncompliance with TVA's policies and the procedures,
16 financial impact, liability risk to TVA, and impacts
17 to TVA's reputation and trust.

18 So what we would like to know is do
19 you think there are other factors, other than these,
20 that we should take into account in our
21 prioritization?

22 DFO MS. ANDA RAY: Can I ask that
23 Nancy or Vickie just explain to them how we look at
24 those six areas and we give you points so that one is
25 not more important than the other but you -- how you
1 get points. 30

2 MS. NANCY GREER: What we try to look
3 at when we prioritize them are the overall impacts to
4 TVA's operations. Flood control, water quality, you
5 could have a situation where somebody has built
6 something that's impacting a navigation channel, and
7 TVA's river operations group typically will bring
8 those to our attention.

9 Environmental impacts could be
10 anything from a septic system on us to site
11 contamination from an adjacent facility.

12 Noncompliance with TVA's policies and
13 procedures, that is something we looked at when I
14 showed you the 26(a) slide. You know, we have rules
15 that say you can't do this and so, you know, we're
16 kind of measuring it against the rules.

17 Financial impacts can be putting TVA
18 in a position of having to do some remediation on our
19 property if there is contamination, even if it's
20 caused from a different source because we're the
21 property owner. It can be something more minor such
22 as a campground operator expanding his operations on
23 to property that he's not authorized to use, and we
24 do have one of those. So he's getting a lot of
25 revenue but TVA is not getting any revenue back out
1 of that. 31

2 Liability risks to the TVA, that gets
3 into contamination issues. We do have one we're
4 looking at on Wilson where the property is
5 contaminated and we don't know if a site cleanup will
6 be required or not.

7 The impacts to TVA's reputation and
8 trust, what does the public think about this? You
9 know, is not doing something going to impact us? If

10 Anda or Mr. Kilgore or the TVA Board have made a
11 decision about something and we don't follow up, that
12 impacts how the ratepayers and stakeholders see us in
13 their eyes.

14 We're not rating as one more important
15 than the other. What we're doing is looking and
16 saying, how many hits do we have for each of the
17 areas that we're prioritizing. We are trying to
18 focus on the ones that have the most impacts to TVA
19 overall. So these are the buckets that we have come
20 up with.

21 MS. VICKIE ELLIS: We're using other
22 folks in TVA to help us do that. We're not doing
23 that on our own. We're asking other people to give
24 us feedback as well on the priority tool.

25 COUNCIL CHAIR MR. TOM LITTLEPAGE: But
32
1 essentially you assign point values? I mean, the
2 process as you envision it would be to somehow to
3 create a point --

4 MS. VICKIE ELLIS: It's not really
5 points, but we're asking them to rank them, color
6 coded bubbles.

7 MS. NANCY GREER: It there an impact

8 here, yes or no, and then we're seeing how many yeses
9 we get for the categories.

10 Actually, we started with a point
11 system, and then one of the wiser and more
12 experienced employees came up to me and they said,
13 you know, if you go by the point system you will
14 always be arguing points. So try the yes or no. So
15 he had a good point, and that's one reason why we put
16 it up here is we would like some input from you on
17 what makes sense as we look at those 4500 as far as
18 how we prioritize?

19 FACILITATOR JOANNE LAVENDAR: Yes.

20 MR. RUSSELL TOWNSEND: I am not sure I
21 understand the prioritization method. Are we saying
22 that if we have 4500 overall violations and half of
23 those are financial impacts that financial impacts is
24 going to be the highest ranking thing? Is that what
25 we're saying?

33

1 DFO MS. ANDA RAY: Let me try. I
2 think you look at each of those 4500 and you say,
3 does that first one have an impact on flood control?
4 Yes.

5 Does it have an impact on

6 environmental? No.

7 No. No. No.

8 Yes, it has an impact on liability.

9 So it gets two checkmarks. Then you go to the next
10 one, No. 2, it gets three checkmarks. The next one
11 gets one. The next one gets five. Five checkmarks
12 gets a higher ranking, and then we would focus on
13 mitigating and working on resolving that violation
14 before we would do the one that only had one
15 checkmark.

16 MR. RUSSELL TOWNSEND: I see. Thank
17 you, Anda. I do have a concern about that. When I
18 look at flood control, maybe water quality, but
19 certainly flood control and navigation, those are
20 potential loss-of-life issues as I see it. I don't
21 see how anything could be more important than that,
22 and that's why I initially thought you had it up top.

23 Environmental impacts, that's an issue
24 where once it's destroyed, whether it's a sensitive
25 species of some type, plant or animal, or whether
1 it's an archeological site, you can't get it back.
2 It's gone for good. It's gone forever.

3 Then I come down here to, you know,

4 policies and financial impact and I think, well,
5 that's really not anything that is going to cause
6 loss of life or destroy an irreplaceable resource.

7 So I would automatically think that
8 would have to be lower as a priority, regardless of
9 how many things there were. I think if you counted
10 all of these things and found most of them had the
11 last four checkmarks, they still wouldn't be as
12 important issues as the top two.

13 DFO MS. ANDA RAY: So the
14 recommendation would be either for waiting or for --
15 I am trying to get a comment. So maybe that they are
16 not all equally weighted.

17 MR. RUSSELL TOWNSEND: That's right.
18 I think you truly need to prioritize these issues. I
19 think you really need to say, look, the loss-of-life
20 risking issues, they have to be the first thing we go
21 out and deal with and the environmental issues have
22 to be the next thing we go out and deal with.

23 You know, somebody having, you know, a
24 boat dock that's too big or something, if it's not a
25 navigational hazard and it's just ugly, you know,
1 that can wait, I think.

2 MRS. JEAN ELMORE: It would appear to
3 me that the noncompliance with TVA's policies could
4 have a potential impact on all of the others. You
5 know, if everybody is in compliance, then you can
6 deal with these. If they are not, they might --

7 FACILITATOR JOANNE LAVENDAR: So we
8 need to address the policy issues as well?

9 MRS. JEAN ELMORE: Well, I mean, yes.
10 I mean, I just think potentially they can affect all
11 of the others.

12 DFO MS. ANDA RAY: So is it
13 overlapping? I mean, it's not an independent
14 criteria?

15 MRS. JEAN ELMORE: Well, I don't know
16 where it would come in prioritizing, but, I mean, you
17 know, if you're not complying, and there are various
18 degrees of noncompliance, but they have the -- the
19 noncompliance has the potential to have effects on
20 all of the others.

21 FACILITATOR JOANNE LAVENDAR: Thank
22 you. Kenny.

23 MR. KENNY DARNELL: I would suggest
24 you would also include the impact to public access.

25 FACILITATOR JOANNE LAVENDAR: All 36
1 right. So if it's privatized, the public cannot
2 access it. Okay.
3 MR. KENNY DARNELL: Yeah. Because we
4 have seen the more ownership a person tends to take
5 on a piece of public land, the less public access is
6 usually allowed.
7 FACILITATOR JOANNE LAVENDAR: Consider
8 public access. Thank you. George.
9 MR. GEORGE KITCHENS: I really just
10 wanted to, and it's frightening to me, but more or
11 less agree with Russell. I really think we ought to
12 weight these things. The top two on the list really
13 are core to the Act and to TVA's mission and I think
14 ought to have more weight than the rest of it.
15 While compliance is important, it's
16 not in the category of environmental protection or
17 flood control, and those things are, you know, super
18 core to what you're about here. I think those ought
19 to be weighted more heavily than TVA's reputation or
20 a policy compliance issue, while those are important,
21 but not -- they just don't rise to the same level as
22 your flood control, loss of life, those sorts of

23 issues.

24 FACILITATOR JOANNE LAVENDAR: Other
25 comments on prioritization factors? Yes, Wes.

37

1 MR. WES ROSENBALM: It's more of a
2 question than a comment. If you apply for a permit
3 at TVA to do anything, does it have a release of
4 liability in that permit? In other words, if they
5 are on your land temporarily or permanently, are they
6 liability issues?

7 DFO MS. ANDA RAY: We have them
8 indemnified. We have indemnification clauses in the
9 marina and campgrounds, but I don't know about other
10 easements and licenses. So that's a good question.

11 MR. WES ROSENBALM: You have got all
12 of these boathouses, swimming pools, everything, and
13 one is not -- you're going to have liability on each
14 one of them. If someone gets hurt, I can guarantee
15 you a lawyer is going to bring it back to TVA
16 somewhere along the way.

17 FACILITATOR JOANNE LAVENDAR: Is that
18 a recommendation?

19 MR. WES ROSENBALM: Yeah. You need to
20 incorporate that protection.

21 FACILITATOR JOANNE LAVENDAR: Right.

22 Thank you. Arthur.

23 SENATOR ARTHUR ORR: I agree with what

24 George is saying with Russell about the

25 prioritization. The policy -- the policies and

1 procedures to me need to say in perhaps in No. 3, and ³⁸

2 I know we're not ranking, but the reason is not just

3 Joe boathouse owner, the one boathouse that may be

4 500 square feet larger than is permitted, but it's

5 the cumulative effect of all of these boat owners

6 that, well, he got away with it or she got away with

7 it and so why can't I make mine bigger and it makes

8 it a much larger problem. So I don't think we need

9 to diminish that, you know, in our mind that what one

10 gets away with that many, many, many more will

11 certainly follow.

12 FACILITATOR JOANNE LAVENDAR: Right.

13 Thank you.

14 MS. BUFF CROSBY: Can I go back to

15 Wes' question on liability?

16 FACILITATOR JOANNE LAVENDAR: Yes.

17 MS. BUFF CROSBY: We consider dock as

18 private property even though we give you a permit to

19 construct that. The way it works is the dock itself
20 is private property. So even if we go out there and
21 inspect sites and somebody tells TVA you can't come
22 on our dock, you know, we don't do it. All the water
23 around it is public water. So anybody can do
24 anything they want in the public waters, but the
25 construction itself we consider private property.

39

1 MR. WES ROSENBALM: What about the
2 decks that's built on land?

3 MS. BUFF CROSBY: A deck coming across
4 would be, you know, private property. Now, where
5 it's actually TVA lands, that's where it probably
6 starts to get fuzzy.

7 FACILITATOR JOANNE LAVENDAR: Thank
8 you, Buff.

9 Other comments, recommendations on
10 prioritization factors?

11 Thank you. Let's move on to --

12 MR. RUSSELL TOWNSEND: Could I also
13 ask how you-all prioritize your mandates of Congress
14 that Congress has placed on you with some of these
15 other things?

16 I am not familiar with certainly all

17 of the laws TVA has to comply with, but when I look
18 down here at impacts TVA reputation and financial
19 impact I think, well, what federal laws have been
20 violated in those instances? What federal
21 regulations have been breached? I'm not sure I could
22 think of any examples.

23 When I think of, you know, flood
24 control and environmental impacts, you know, when I
25 think of ground-disturbing impacts like putting in,
1 you know, boats, boat ramps and, you know, these
2 pillar supports for boathouses and things like that,
3 I think, well, that's now classified as a federal
4 undertaking on TVA land and so that's a violation of
5 the National Historic Preservation Act.

6 So when you have these violations of
7 congressional mandates and federal regulation, does
8 that take a higher priority than just actually that's
9 ugly or we don't want to encourage naughty behavior
10 by their neighbors?

11 DFO MS. ANDA RAY: I think that's a
12 comment that we have got to capture to say do we add
13 another priority that talks about the additional
14 federal laws that are violated, and that's a good

15 comment.

16 FACILITATOR JOANNE LAVENDAR: So let's
17 look at federal laws that may be violated and they
18 need to be considered.

19 Okay. Let's go on to the next one,
20 and then we will come back, after we get all the
21 comments, and make sure that we have captured what
22 you want to recommend to the Board.

23 Okay. The next question is: How
24 should TVA communicate to the public about these
25 issues and its steps regarding resolution?

41

1 MRS. JEAN ELMORE: Positively.

2 FACILITATOR JOANNE LAVENDAR: Okay.
3 Positively.

4 DFO MS. ANDA RAY: Think about the
5 process a little bit, you know. Should it -- do you
6 send out a media release ahead of time?

7 Do you contact your congressional
8 staffs, because they are going to get a bunch of --
9 you guys are going to get a bunch of letters from
10 your constituents?

11 Do you just react and do it as a part
12 of a course of business?

13 That's the kind of comments that we're
14 kind of looking for. I mean, how will you position
15 this so that it's a public benefit issue and not a
16 big, bad \$13 billion company is picking on the little
17 guy issue.

18 FACILITATOR JOANNE LAVENDAR: Tom.

19 COUNCIL CHAIR MR. TOM LITTLEPAGE: I
20 guess I've put a little bit of thought into this, and
21 I think this is, as you've alluded to, a very tricky
22 issue.

23 One of the things I think you have to
24 do is to make sure in all your programs that you're
25 clearly labeling TVA lands and right-of-ways so that
1 people can more clearly distinguish where they're⁴²
2 trespassing or where they are moving.

3 As you go through processes, to the
4 degree you find opportunities, make sure you label
5 TVA properties and lands, and then you have got to
6 make sure -- I have here identification communication
7 consistency. Make sure that the communication -- you
8 know, you go through this internal process to make
9 sure everybody up and down has an understanding of
10 what you're going to do and where you're going to do

11 it so that the political pressures or the appeals
12 that are going to occur you know that you're going to
13 get back because you don't want your TVA staff at
14 the -- that's working face-to-face with the public
15 say one thing and then have those decisions reversed
16 because it hurts the integrity and trust that we
17 alluded to earlier.

18 Then I think we've heard this
19 yesterday, whatever the policies are they have got to
20 be consistent, and you have got to make sure that
21 there are standards and responses that are consistent
22 across the board, that there's rationale of what
23 you're doing and why so this, well, you let John or
24 Betty do it, why can't I do it, that argument needs
25 to go by the way. At the same time you need to make
1 sure as an organization that you have both compassion⁴³
2 and common sense as you go on this case-by-case.

3 Obviously you have got standards and
4 obviously you have got to adhere to them, but in
5 certain cases you have got violators who did all the
6 right things, you know, you go through and they had
7 property surveyed and the surveyor messed up and the
8 surveyor doesn't have liability, I think Vickie

9 alluded to one yesterday, and so they did all the
10 right things and still ended up doing something wrong
11 versus somebody who flagrantly says, well, I don't
12 think I have to have a permit to do whatever I want
13 to do.

14 So you have to just make sure you can
15 balance your process in that. So I guess I would
16 throw that out for discussion in terms of how to help
17 the staff here look at this delicate issue and maybe
18 that will help people think a little bit.

19 FACILITATOR JOANNE LAVENDAR: Kenny.

20 MR. KENNY DARNELL: Two things. You
21 can do it by using some cross-agency communication.
22 County Health Departments regulates the installation
23 of septic systems and leach fields and things of that
24 nature. They know the county regs.

25 TVA should apprise them of the
1 regulations regarding placement of those things on
2 TVA property so that when they do their inspections
3 they will also advise or not permit installations on
4 TVA property.

5 Another thing is for your people who
6 build waterfront structures, boat docks, boathouses,

7 and things take that, perhaps you could have a
8 license requirement for those vendors and they would
9 have to sign agreements with TVA and be made aware of
10 the TVA regulations before they would be allowed to
11 construct waterfront structures.

12 FACILITATOR JOANNE LAVENDAR: Joe.

13 MR. JOE SATTERFIELD: Just to, I
14 guess, follow up on both what Kenny and Tom have
15 said. I think on the mountain reservoirs, those
16 tributary reservoirs, they may be small enough that
17 they have got some pretty active lake associations,
18 and it might be a good form to go to them once the
19 rules are established, I guess, and put the word out
20 to them. I know they -- like I said, they are pretty
21 active on those smaller lakes.

22 FACILITATOR JOANNE LAVENDAR: Thank
23 you. Russell.

24 MR. RUSSELL TOWNSEND: I'm certainly
25 no marketing expert. So I can't probably give you
1 the best advice on how to reach the public, the
2 different methods like the Internet and whatnot, but
3 I think referring back to what Tom was saying that
4 fairness and consistency is very important.

5 One way that TVA could probably
6 downplay being the bad guy or the bully is to be sure
7 that they are acting in the public trust, to be sure
8 that they convey to the communities that they are
9 enforcing these laws because these laws are there for
10 the public good, the good of all the people, not just
11 a few individuals or the folks around the lake or in
12 a particular state, but all the people in the United
13 States. And, you know, with regard to federal
14 regulation, that's the reason it's there.

15 The other thing I was thinking of as
16 it came up, have you all with some of these
17 structures at campgrounds and things like that, you
18 have -- you have -- I know you have lakeshore
19 management teams and people that go around and
20 survey.

21 Do you actually do anything like
22 cities or counties where you have building inspectors
23 where they are required to get a permit and then as
24 the thing is constructed they actually -- there would
25 be a TVA person who would actually sign off and say
1 that this is to code or this meets the TVA permitting⁴⁶
2 requirements or it does not meet them and you have

3 got to take off 700 square feet or something like
4 that? Has that be considered?

5 DFO MS. ANDA RAY: I think we can put
6 that up. There's several when you get the permits it
7 says you will do it this way.

8 Do we actually go out there and make
9 sure they are constructing it that way? No.

10 Sometimes we happen to run into it and
11 we post them in the midst of it and they go thanks,
12 you know, and some actually do comply.

13 FACILITATOR JOANNE LAVENDAR: Kenny.

14 MR. KENNY DARNELL: Well, then some of
15 the issues the Council has been involved in,
16 particular the land use issues, we have found that
17 TVA did have rules and regulations in place but that
18 they weren't being followed in all instances.

19 The upshot of that was when you tried
20 to go back and shore up those regulations or start
21 abiding by your regulations, I think you got more
22 support from the people who were tired of, you know,
23 seeing others take advantage of the regulations.

24 I believe you would have the same
25 thing here, you have rules and regulations in place,

1 but the enforcement has been lax. Now that's to the
2 point -- and I think you see by the fact that the
3 public is actually calling you and saying that
4 something needs to be done about this, you're at the
5 point now where the public would accept adherence to
6 these regulations. I think all they want to know is
7 that they are fair and they are being applied fairly
8 across the board.

9 FACILITATOR JOANNE LAVENDAR: Thank
10 you. Tom.

11 COUNCIL CHAIR MR. TOM LITTLEPAGE: I
12 was going to, I guess, reemphasize what Joe and I are
13 trading back and forth, but that concept that Kenny
14 alluded to of using opportunities with lake
15 association meetings or meetings of stakeholders and
16 constituents to basically -- I apologize for that --
17 to basically outline the shoreline management plans
18 at these projects and the watershed management plans
19 so that you are continually reinforcing both the
20 problems and the TVA procedures.

21 You know, it's an ongoing -- you know,
22 this isn't something that's out of the ordinary.
23 These are processes that had public input as they

24 were developed and we're implementing trying to
25 maintain these standards and policies associated with
1 that. 48

2 So the broad base of a spectrum
3 approach, of looking at all the programs and
4 opportunities to reinforce the central theme of a
5 message. This is the kind of concept I am trying to
6 get across.

7 MRS. JEAN ELMORE: For the common good
8 of the whole --

9 COUNCIL CHAIR MR. TOM LITTLEPAGE: Yes.

10 MRS. JEAN ELMORE: -- to put it
11 succinctly.

12 FACILITATOR JOANNE LAVENDAR: Thank
13 you. Mike.

14 MR. MICHAEL GOODMAN: I know of
15 instances on Kentucky Lake. I know some people that
16 are applying for permits and I know, I guess, your
17 watershed group or somebody has come out and done an
18 inspection, is that a potential group to go back and
19 do the follow-up with? Is that -- is that resource
20 available?

21 Like Russell was talking about, they

22 go out and they issue the permit, but is there a
23 limitation on the construction time? If I get a
24 permit today, do I have five years to build?

25 MS. BUFF CROSBY: It's 18 months. In
49
1 a lot of our old permits we didn't have that in
2 there. We started adding that to the permit that you
3 have got 18 months to get your permit completed or it
4 expires and you have to come back.

5 MR. MICHAEL GOODMAN: And then if
6 that's the case that might be a follow-up for those
7 folks to go back out and check at least on the new
8 construction that's going on, that might be a
9 resource to use.

10 FACILITATOR JOANNE LAVENDAR: Other
11 ideas on communicating with the public?

12 DFO MS. ANDA RAY: Let me ask -- put
13 another -- I need the -- your comments on the
14 consistency, which we all keep talking about is what
15 builds trust, and the speeding-ticket approach, when
16 you're going down the highway the sheriff doesn't
17 pick up every speeder. He picks up one or two and
18 makes a statement. That person will inevitably say,
19 I was just going the same speed limit as everybody

20 else, how come you didn't pick them up?

21 We talk about being consistent and you
22 take Vickie's, well, we do one or two on every
23 reservoir and send a message, which doesn't look
24 consistent to the people on reservoir No. 1, do you
25 have any comments about how you would help

50
1 communicate that or is that not appropriate to take a
2 speeding-ticket approach versus a consistent, okay,
3 there's four in a row, let's get them all?

4 FACILITATOR JOANNE LAVENDAR: Arthur.

5 SENATOR ARTHUR ORR: Going back to the
6 fear of the public pushback, you mentioned you had
7 some be 4,000 violations that you found and you may
8 be able to do 30 to 40 in one a year, that's not
9 going to spark a large human outcry, I don't think.

10 Back to the targeting issue, I guess,
11 in my opinion, you start with the worst ones first.
12 There was a mention here on Guntersville Lake of a
13 larger boathouse and said that the builder or
14 somebody was just notorious for building larger
15 houses regardless -- just disregarding the permit and
16 just thumbing his nose, I think that's the person you
17 target on Guntersville Lake and send a message. We

18 think your field staff knows who is out there and who
19 the violators are.

20 Also, the priority that we talked
21 about earlier, the navigation and environmental. I
22 think you know who they are, the most egregious
23 situations are, but to start there and work down.

24 DFO MS. ANDA RAY: So starting with
25 the ones that are top priority to life and
1 endangerment of species and human life and then -- 51

2 SENATOR ARTHUR ORR: Policies and
3 procedures being No. 3.

4 DFO MS. ANDA RAY: And then blatant
5 violations as opposed to --

6 SENATOR ARTHUR ORR: Well, you know,
7 that's going to be tricky. It's not going to be
8 easy.

9 DFO MS. ANDA RAY: They have an idea.
10 Okay.

11 SENATOR ARTHUR ORR: The trailers
12 on -- you know, people are just basically trying to
13 reside on TVA land, and let's get them off.

14 FACILITATOR JOANNE LAVENDAR: George.

15 MR. GEORGE KITCHENS: That's sort of

16 where I was going to, Arthur. I would have picked
17 the meth lab campsite that had the shopping cart fish
18 basket in the water because to me that one obviously
19 looks like --

20 DFO MS. ANDA RAY: You're not far from
21 the truth.

22 MR. GEORGE KITCHENS: It is what it
23 is, you know. From an environmental protection
24 standpoint and just gross violation of being on TVA's
25 land without permission, that one is the one I would
1 go after before the oversized boathouse kind of guy
2 who is probably not polluting the water. Yeah, he's
3 taking up more square footage. He may be a threat to
4 navigation or flood control, but the meth lab picture
5 that we had earlier, that one needs to go.

6 FACILITATOR JOANNE LAVENDAR: Kenny.

7 MR. KENNY DARNELL: And I will
8 apologize to Anda for saying this ahead of time, but
9 you have created a problem here by the enforcement in
10 the past being willy-nilly, for lack of a better
11 term.

12 What you're going to have to do is
13 just like you did with the land use issues, it's

14 going to have to come all the way from the top level
15 administration and the Board level of TVA and say,
16 you know, from where the sun now stands we will
17 tolerate this no longer, you know, that this is going
18 to end.

19 You're also going to have to look at
20 some issues where people have significant economic
21 investments in some of these things, and you're going
22 to have to seriously look at some more grandfathering
23 and you're going to look at the -- if this is not
24 causing us a problem, endangering a life or
25 environment or whatever, is this a fight we want to
1 get into, but I think you can establish that from 53
2 this point that anything that's built that's not in
3 compliance will be addressed.

4 FACILITATOR JOANNE LAVENDAR: Thank
5 you. Russell.

6 MR. RUSSELL TOWNSEND: I think one of
7 the reasons the Knox County Sheriff doesn't give
8 everybody a speeding ticket and kind of takes the
9 shotgun approach is because they are just not enough
10 Knox County Sheriff personnel to write everybody in
11 Knox County a ticket who speeds.

12 So enforcement requires a lot of
13 resources. It requires a lot of dedication from TVA.
14 I'm not sure that you can necessarily do much of a
15 better job than you're already doing. I don't know
16 what kind of resources TVA has to throw at this. I
17 assume less now than perhaps ever in recent history.

18 I think there are certain things maybe
19 like this, you know, inspector idea and some of these
20 type things that could be done relatively
21 inexpensively and could be applied consistently to
22 particular reservoirs with the lakeshore management
23 team and could really help that appearance of
24 consistency and fairness.

25 FACILITATOR JOANNE LAVENDAR: George. 54

1 MR. GEORGE KITCHENS: Just another
2 stray idea to deal with the secondary layer of
3 compliance, the oversized boathouses and so on, that
4 violate their permit that could potentially lead us
5 to, you know, the appearance and the size of those
6 boathouses does have some impact on the property
7 owners' residential property values.

8 One thought that I had is that, you
9 know, yes, they are in violation of the size that

10 they were permitted for and that we create as a part
11 of their fine or punishment an annual payment that
12 they make to TVA for that violation that then creates
13 a revenue stream to further help TVA with its
14 enforcement issues so that you're not then damaging
15 the value of their house on the hill up here but you
16 are getting some revenue out of the deal to help fund
17 other compliance issues. I don't how to do that but
18 we --

19 SENATOR ARTHUR ORR: The problem would
20 become for your rich folks is, I will pay my \$200 a
21 year fine, so do that, you know, just go ahead and
22 fine me, but I am building a 4,000 square foot
23 boathouse.

24 DFO MS. ANDA RAY: And do they get to
25 sell it and the next person pays the fine? In other
1 words, they get to sell it and keep the value? 55

2 MR. GEORGE KITCHENS: Yeah. It's sort
3 of like the homeowner association dues or something
4 like that, it goes with the property. In perpetuity
5 you get the -- I would make it more painful than \$200
6 a year, but you at least get the -- you know, make it
7 cost them.

8 FACILITATOR JOANNE LAVENDAR: Michael.

9 MR. MICHAEL GOODMAN: I agree with
10 what all has been said, but from an industrial
11 viewpoint and background, TDEC and EPA will not allow
12 us to construct a new boiler without permitting it.
13 There's severe penalties for it.

14 I know that you have to have a balance
15 at everything you're doing. You're right, from
16 starting enforcement now you have got a big hurdle,
17 but if it doesn't hurt people are going to continue
18 to do it.

19 The example yesterday was, I need to
20 find the TVA maps, move my trailer in on a piece of
21 property and have a free piece of lake property, you
22 know, that's the kind of attitude that's going to
23 prevail. So you're going to have to enforce the
24 rules, and sometimes it's going to have to hurt
25 before people are going -- if it's a minor fee, I
1 will cut the tree and pay the fine. So you're going
2 to have to -- you have a tough job trying to get that
3 balance.

4 FACILITATOR JOANNE LAVENDAR: Other
5 comments?

6 SENATOR ARTHUR ORR: I have to share
7 this with you-all. This should be an off-the-record
8 comment.

9 I lived in Bangladesh for several
10 years, and, you know, Bangladesh floods regularly.
11 It's the most densely populated country in the world.
12 It's about 140 million or 150 million in the land
13 size the size of Georgia. So if you can imagine half
14 of our country going into Georgia and living.

15 When you drive through the cities, on
16 the river banks you have all sorts of squatters that
17 have built houses on stilts. So you have the first
18 level which is up next to the upper level of the
19 bank, then you have got another set after them and a
20 third, and they literally build out into the
21 riverbank where almost they cover a river or a large
22 stream.

23 I think about some of these pictures
24 we have seen where if we don't stop the first one,
25 you know, you will have more and more people
1 squattling or abusing the system. Anyway, I share
2 that with you. It's somewhat irrelevant. Anyway, it
3 just reminded me of all of those people living on

4 cane stilts out in the -- and that's their permanent
5 house. There's just not enough land to go around
6 there.

7 So end of irrelevant comments.

8 COUNCIL CHAIR MR. TOM LITTLEPAGE: I'm
9 not sure that it is irrelevant because if you look
10 over time haven't we seen that, you know, the
11 violations get bigger and more grandiose and more
12 complicated and potentially a higher liability as
13 this is allowed to continue.

14 That's one of the aspects in terms of
15 getting consistency within Mr. Kilgore and the Board,
16 you know, the determination that a line has to be
17 drawn and that we're going to approach these
18 consistently from here on out, because failure to do
19 so is only going to continue that process.

20 DFO MS. ANDA RAY: You have got your
21 situation in Kentucky, you don't build a house in the
22 flowage easement. We didn't stop the first one or
23 the second one or the first hundred, and we're now at
24 400 private homes and how many -- a thousand
25 structures? Yeah, we have an issue.

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1 FACILITATOR JOANNE LAVENDAR: What are

2 other general recommendations or considerations the
3 Council has with regards to pursuing the resolutions
4 of these issues?

5 Kenny, were you the --

6 MR. KENNY DARNELL: I'm one behind
7 you, but go ahead.

8 FACILITATOR JOANNE LAVENDAR: Were you
9 on the previous one? You go ahead with your comment,
10 please.

11 MR. KENNY DARNELL: Well, on Kentucky
12 Lake we were flooded in '46. The enforcement was
13 kind of laisses-faire for several years there. You
14 have got your retained lands that TVA owns in fee and
15 the marginal strip TVA owns in fee. It was just
16 generally understood if you had marginal strip you
17 could put a boat dock on it and you did. If you had
18 retained lands you had to ask somebody, but typically
19 they would say go ahead and do it.

20 We have a few subdivisions that were
21 developed on behind retained land. They got
22 permission to put community boat docks. When the
23 regulations changed, then they grandfathered those
24 things in.

25 Now the problem is we have got several
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1 of these Bangladesh looking things sitting out in the
2 lake that are just deteriorating. They can't rebuild
3 them. They can't replace them when they are gone,
4 and they are going to get the last ounce of use out
5 of them they can. Someday they are all going to
6 break loose and hit the dam.

7 So when you start -- when you start
8 trying to correct the problems I did mention there's
9 things you're going to have to grandfather in, but
10 also consider that when you grandfather something in
11 you have just bought yourself that problem for the
12 next 50 to 100 years.

13 MR. W. C. NELSON: Just one comment on
14 the prioritization. Where does a complaint from the
15 neighbor fit into this? It's not a prioritization.

16 MR. KENNY DARNELL: It depends on the
17 neighbor.

18 MR. W. C. NELSON: I think that that's
19 one thing that should be considered in determining
20 which problems to pursue.

21 FACILITATOR JOANNE LAVENDAR: Define
22 complaints from the public.

23 MR. W. C. NELSON: If you have a
24 neighbor call in and complain but he doesn't get the
25 prioritization or the compliance issue doesn't score
1 in the prioritization, do you just let it go? 60

2 DFO MS. ANDA RAY: What if it's not
3 true?

4 MR. W. C. NELSON: Well, if it is
5 though, what I'm saying is if it is -- if it is a
6 problem but it doesn't score high enough to take any
7 action, then you have got, you know, people
8 complaining and you're not taking any action.

9 DFO MS. ANDA RAY: Okay.

10 MR. W. C. NELSON: So that should be
11 part of the prioritization if you're having
12 complaints about a situation, even though it doesn't
13 score high enough to be involved.

14 COUNCIL CHAIR MR. TOM LITTLEPAGE: So
15 one neighbor may not be as much, but if you had
16 multiple -- you know, to the extent that you see it's
17 a wider spread problem?

18 MR. W. C. NELSON: If you have a
19 situation where the neighbor on each side of this
20 person that has the 3,000 square foot boathouse

21 that's blocking their view and they are calling and
22 complaining about it and you say, well, we have got a
23 lot of problems and that one just doesn't score
24 enough for us to check into, they are not going to be
25 happy. So that would be one facet that ought to be
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1 considered.

2 FACILITATOR JOANNE LAVENDAR: Add that
3 to our prioritization factors.

4 MR. GEORGE KITCHENS: Was the
5 boathouse there when the new neighbors bought that
6 property?

7 MR. W. C. NELSON: I do not know. It
8 could be either way. It could be either way. If you
9 know it's not in compliance, then you kind of want it
10 moved.

11 FACILITATOR JOANNE LAVENDAR: Other
12 comments in general in terms of this issue of how we
13 should pursue resolution of these issues?

14 Russell.

15 MR. RUSSELL TOWNSEND: I guess just
16 one thing that I would add is, you know, the terms of
17 grandfathering and fines have come up, and while I
18 think the revenue stream idea is a really good idea,

19 the grandfathering and funds won't necessarily fix
20 the situation. I think maybe some more severe action
21 will need to be taken with regard to enforcement.

22 I think it was said by somebody, you
23 know, as far as a speeding ticket goes that they will
24 just pay their fines, you know. If you just have
25 these little violations that they will just
1 cheerfully pay their fines. I think that's a real 62
2 danger for enforcement is just kind of letting people
3 get off with a slap on the wrist but no remediation
4 or mitigation.

5 COUNCIL CHAIR MR. TOM LITTLEPAGE: I
6 was just going to throw something out, and I guess I
7 would be interested to hear other people's thought on
8 this.

9 There was a comment before where these
10 violations were -- as they took action it was sort of
11 across the Valley, and I am curious about the concept
12 of taking a project-by-project approach and really
13 trying to concentrate and understand -- you know,
14 take some time at a given project, look at the
15 violations and try to attack them as a group on that
16 project so that everybody's neighbor -- as W. C

17 pointed out, everybody gets sort of addressed at once
18 as opposed to taking extended periods of time to do a
19 little bit at a time across the Valley.

20 So I throw that out as a concept, but
21 I guess I am still trying to think that through how
22 that would work. I mean, it may help you in terms of
23 focusing resources to try to attack, again, these
24 higher level issues but do it a project at a time so
25 that you can make an effort and emphasis and people
1 understand what you're trying to do but you're doing⁶³
2 it in a concentrated way.

3 MR. RUSSELL TOWNSEND: I think that's
4 a really good idea, Tom. I know that there may be
5 issues come up where somebody -- if you pick Cherokee
6 Reservoir or something where they say, well, why are
7 you doing this to us, why are you picking on us, but
8 violations are violations. I think that's easy
9 enough to get around, especially the public trust
10 issue.

11 I think that would really allow TVA to
12 focus their enforcement resources and also focus on
13 the spectrum of issues to really get some good solid
14 data on which cases are the easiest and hardest to

15 deal with, you know, and maybe some more insight on
16 how prioritization should work in the future, but I
17 think that's a real good way to take advantage of
18 your enforcement resources.

19 FACILITATOR JOANNE LAVENDAR: Kenny.

20 MR. KENNY DARNELL: And I agree with
21 Tom. There are issues that are unique to each
22 reservoir. We don't have boathouses on Kentucky,
23 where that is the major issue on some of them, but
24 some of the things that we have on Kentucky Reservoir
25 are issues that you wouldn't see -- since we're a
1 main stem reservoir that you don't see on some of the
2 others.

3 COUNCIL CHAIR MR. TOM LITTLEPAGE: And
4 just to amplify, I'm not proposing that you try to
5 completely eliminate the backlog. It's looking at
6 those as Russell alluded to, the life or health and
7 safety issues, you know, focusing on those higher
8 priority violations and enforcement issues to try to
9 attack those kinds of things.

10 DFO MS. ANDA RAY: Per reservoir?

11 COUNCIL CHAIR MR. TOM LITTLEPAGE: Per
12 reservoir, or to the degree it makes sense, a

13 geographic region watershed approach or something.

14 MR. KENNY DARNELL: You definitely
15 wouldn't want anything that would impede your
16 navigation or that would be a hazard to navigation or
17 something that's going to pollute the watershed,
18 something that has a very immediate detrimental
19 effect would have to be a higher priority thing, but
20 in those instances you're going to have to probably
21 seek injunctive relief of those things.

22 FACILITATOR JOANNE LAVENDAR: Other
23 comments?

24 DFO MS. ANDA RAY: Can I ask one quick
25 question?

1 One of the things that's been kind of ⁶⁵
2 talked about is we have talked about the enforcement
3 and if it doesn't hurt and if it's just minor they
4 will just pay it and go along with it.

5 What about the other side?

6 There's some controversial discussion
7 now going on that if you don't like the decision that
8 TVA makes it costs you 29 -- 32 cents, how much is it
9 now, 43, 41 cents, and it doesn't matter, they are
10 just going to continue to write that 41 cents until

11 they get past this level, Tom's level, and they get
12 to the Board, and then there are no other appeals
13 after the Board.

14 So there's some discussion about --
15 controversial discussion about charging people to do
16 an appeal. I would like your input on that.

17 SENATOR ARTHUR ORR: When we were
18 driving around yesterday and we talked about the
19 expense of the litigation going after violators, the
20 blatant violators, I had the random thought of some
21 kind of loser pays policy that might be investigated.

22 An appeal fee, you know, you pay a
23 price to go to court. Again, if they think they can
24 just delay it, delay it, and delay it, you may be
25 able to segregate what kind of actions or charge --

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1 or a cost table whereas if you have somebody
2 blatantly setting up camp on TVA property that that
3 appeal may cost one thing as opposed to a boathouse
4 appeal. These are just random thoughts in the last
5 minute.

6 There ought to be some charge or cost
7 for people just saying, I'll hire my lawyers and we
8 will just tie it up for six years and I don't care.

9 There ought to be some kind of cost factor for people
10 like that.

11 The other thing is, again, with the
12 people just setting up camp or having a house on TVA
13 property unlike -- similar to the Bangladesh example
14 or dissimilar from that, TVA owns this land and here
15 they are homesteading on public land when if you
16 don't enforce that, again, you just have the problems
17 of you have got to do what you got to do and charge
18 them.

19 FACILITATOR JOANNE LAVENDAR: Kenny.

20 MR. KENNY DARNELL: I think if you
21 want people driving by and throwing eggs at the
22 windows of the TVA building, you know, you can start
23 charging a fee to appeal. I don't think you can do
24 that. I'm not sure you could even legally do that.

25 What has happened in the past is
1 appeals have been very successful in either delaying⁶⁷
2 the action or preventing the action all together
3 because you had the willy-nilly enforcement of it.
4 If you got hold of the right person within TVA, even
5 up to the Board level, you could have your 5,000
6 square foot boathouse down there with a bar on top.

7 Once people see that enforcement is
8 going to be across the board, and again, go back to
9 the land use issue, once you delineate that this is
10 the way it's going to be and you can take this all
11 the way to the Board level and the Board says this is
12 what -- this is our policy and we're going to abide
13 by it, then people will look twice at doing an
14 appeal.

15 One thing that the Corp of Engineers
16 does that kind of discourage a lot of the endless
17 appeals is we're going to fine you X amount of
18 dollars a day for every day you're not in compliance,
19 and if you lose your appeal, then you're liable for
20 this.

21 MR. JOE SATTERFIELD: I started to set
22 my card back down after Kenny started talking, but I
23 feel like a charge for an appeal might be a good
24 idea. It would have to be based on some reasonable
25 criteria that there's expenses involved in looking at
1 an appeal. 68

2 My analogy was going to be several
3 years ago in the electric utility business we were
4 having a lot of nobody believes in the meter. They

5 get a high bill and nobody believes the meter. So we
6 started making a charge for testing the meter, and it
7 cut down on the number of meter tests substantially.

8 Then maybe a question, if I can do
9 that while I've got the microphone, not to change
10 where we're going with this, but in a noncompliance
11 issue with a property owner out there now, is
12 there -- is there a time frame that's associated with
13 correcting the problem? You know, do you have 30
14 days to get it done or is there some kind of
15 follow-up on it?

16 DFO MS. ANDA RAY: And I'm not saying
17 no, but you can go ahead and follow up on that.
18 Appeals is a different answer.

19 MS. BUFF CROSBY: If there's a kind of
20 violation out there, the way we typically do it is we
21 will contact you and either leave a note on your dock
22 to say, you're in noncompliance, please call us, but
23 we typically give you about 90 days to get into
24 compliance or at least come in and talk to us and we
25 try to work -- the first line is trying to get that
1 voluntary compliance, but then typically we give you
2 90 days to try to get into that compliance before we

3 go to that next level.

4 DFO MS. ANDA RAY: But the trouble is
5 there comes a point of what's the next level, and
6 that's what's been happening for 20 or so years. The
7 next level is I write you a letter, then I write you
8 a letter from the vice president, then I write you
9 another letter, then I post you again, and by that
10 time you start figuring it out after about five or
11 ten years, you know. So that's what we're doing now
12 is saying, no, there will be steps.

13 Now, on the appeals there is -- it's
14 not like a court. There is -- you have 30 days to
15 provide more -- 60 days to provide more information,
16 and then you appeal at that level and then you make a
17 decision. Then they can appeal the next level within
18 a certain amount of time. So there is a time limit
19 on the appeals process, but on the first posting --

20 COUNCIL CHAIR MR. TOM LITTLEPAGE: Do
21 they have to appeal in person or is it just simply
22 write a letter?

23 DFO MS. ANDA RAY: A 41 cent stamped
24 letter.

25 COUNCIL CHAIR MR. TOM LITTLEPAGE: So

1 maybe one step would be to make them appear

2 personally in some fashion.

3 DFO MS. ANDA RAY: Okay. Maybe a

4 little bit more --

5 COUNCIL CHAIR MR. TOM LITTLEPAGE: I

6 guess to help it be a little less frivolous.

7 DFO MS. ANDA RAY: Will that get us

8 eggs there, Kenny?

9 MR. KENNY DARNELL: Huh?

10 DFO MS. ANDA RAY: Will that get us

11 eggs?

12 MR. KENNY DARNELL: Yeah.

13 DFO MS. ANDA RAY: That too, huh?

14 FACILITATOR JOANNE LAVENDAR: Russell.

15 MR. RUSSELL TOWNSEND: I wasn't here

16 yesterday and so I have got a lot of talking to make

17 up for.

18 With regard to charging for appeals,

19 that doesn't seem inappropriate to me to do that. I

20 think the point about court cases, you know, filing

21 and that type of thing costing money is a good point.

22 I think one of our big problems in

23 society today, and it doesn't matter whether it's

24 secondary education or human resources or what,
25 there's too many dang opportunities to appeal.

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1 I think TVA can really do themselves
2 and the public a great service by saying you get one
3 appeal. The Board puts their faith in our natural
4 resource stewardship people, and whether that's Anda
5 or whatever, if she hears your appeal and she says
6 yes or no, that's it, that's what the Board approves.

7 I don't know if, you know, a certain
8 number of appeals are congressionally mandated or
9 not, but if they are not I think the buck has got to
10 stop somewhere and the sooner the better.

11 FACILITATOR JOANNE LAVENDAR: Jean,
12 you had a comment earlier.

13 MRS. JEAN ELMORE: It's probably
14 redundant, but it seems to be the classic
15 give-an-inch-take-a-mile syndrome because, you know,
16 over the many years of the noncompliance that were
17 small, that were not any big deal, you know, okay, so
18 you have a little infringement, we can overlook that,
19 no problem.

20 You know, 20 to 30 years later you
21 have got huge infringements. So if we could get

22 compliance and total compliance, which is a dream
23 world, I'm sure, but if you could get that, then it's
24 going to stop these big encroachments. Stop it down
25 here instead of waiting until it gets up here.

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1 FACILITATOR JOANNE LAVENDAR: Kenny.

2 MR. KENNY DARNELL: Russell has got a
3 good point there. You know, from this point forward
4 regulations you can stipulate as part of that license
5 that if you don't like the decision you can appeal it
6 to this level of the TVA. Then if you appeal further
7 than that, you can also stipulate the venue in
8 Federal Court, which typically an organization will
9 stipulate the court that's located in their town or
10 county, and you can say we will fight this out in
11 Federal Court in Knoxville. When people see that
12 they are going to have to spend their resources in
13 Knoxville court, that changes things. That's a
14 discouraging factor sometimes.

15 FACILITATOR JOANNE LAVENDAR: Wes.

16 MR. WES ROSENBALM: One of the things
17 we do in our contracts is when the other entity has
18 to sign it is we make arbitration be the end, not
19 court. So if you issue a permit and put arbitration

20 in it, then that's the end of it. You don't have to
21 go to court.

22 SENATOR ARTHUR ORR: But then you have
23 got to pay the arbitrator, and that can get
24 expensive.

25 COUNCIL CHAIR MR. TOM LITTLEPAGE: I
1 guess I tend to echo this concept of trying to limit
2 the process. What I would tend to recommend is that
3 you have one organizational level appeal, and then
4 for all -- for the political reality you have got to
5 have an opportunity to appeal before the Board.

6 So maybe you set up a hearing or
7 review of some appropriate level within the TVA staff
8 and they hear those collective appeals at one time.
9 Then those that are not resolved, you have one
10 opportunity to go to the Board.

11 You charge, again, a nominal fee. The
12 more wealthy violators are certainly not going to
13 have any problem. The opportunity or goal is to
14 establish a charge basis that doesn't preclude
15 somebody with limited means with pursuing an appeal
16 but it eliminates frivolous or non-justifiable
17 appeals, you know, some minimal amount that would do

18 that, but a very structured and limited process that
19 allows for people with limited means to go through
20 and make challenges and to make arguments that maybe
21 didn't get expressed, but at the same time, put a cap
22 on how long and how difficult the process is.

23 The bottom line -- one last thing.

24 The bottom line is consistency. You know, I have
25 said it and several of y'all have said it. You have
1 got to undertake this with the Board's full support. ⁷⁴

2 It's a -- I guess I am sensing a strong sense of the
3 Council that that needs to be lined out so that you
4 don't put the staff out there trying to enforce
5 something that gets overturned in this appellate
6 process.

7 FACILITATOR JOANNE LAVENDAR: Joe.

8 MR. JOE SATTERFIELD: This may be a
9 dangerous thought, but is there some way to work a
10 stakeholder group into the appeals process?

11 DFO MS. ANDA RAY: Put it up there.

12 MR. JOE SATTERFIELD: It seems like
13 that could be between the staff and the Board or the
14 Board and staff and court.

15 DFO MS. ANDA RAY: Watch out, this

16 group might be it.

17 MR. GEORGE KITCHENS: It's not us.

18 The stakeholder group would consist of other
19 violators so that it would be like a jury of your
20 peers. You'd go in front of the other violators and
21 ask them, hey, is it all right what I did?

22 MR. JOE SATTERFIELD: I didn't think
23 about violators, but I did think about other people
24 maybe on that same reservoir or that same area so
25 that, you know, they look at, well, we don't want our
1 lake trashed. 75

2 FACILITATOR JOANNE LAVENDAR: Other
3 comments?

4 MR. GEORGE KITCHENS: My comment, Joe,
5 was intended purely for humor. It had no other
6 value.

7 DFO MS. ANDA RAY: But what I hear you
8 saying is the same thing that Russell was bringing up
9 earlier is that bringing other people on board with
10 the process makes it not just TVA, whether it's your
11 peers or other federal agencies or both.

12 FACILITATOR JOANNE LAVENDAR: Anda, do
13 you have other questions you might want to ask?

14 DFO MS. ANDA RAY: No. This has been
15 great. Thank you.

16 MR. KENNY DARNELL: Just to echo what
17 Anda said there, you could have a group representing
18 each reservoir. There's a possibility you could
19 establish regulations that are unique to each
20 reservoir and let those groups decide those within
21 the TVA guidelines.

22 FACILITATOR JOANNE LAVENDAR: Okay.
23 Other ideas before we see what our consensus is in
24 terms of recommendations for the Board?

25 Okay. Let's look at what you have
1 come up with and let me validate this process. 76

2 DFO MS. ANDA RAY: Can you make that
3 bigger because I can't see it?

4 COUNCIL CHAIR MR. TOM LITTLEPAGE: For
5 those of us that are age challenged.

6 FACILITATOR JOANNE LAVENDAR: To
7 validate this process here, I just want to check that
8 we want a consensus of recommendations. Is that our
9 process?

10 DFO MS. ANDA RAY: Consensus is okay,
11 yes, majority.

12 FACILITATOR JOANNE LAVENDAR: Okay.

13 So we're first going to look at what your
14 recommendations are relative to other factors that
15 should be considered. Plus, you-all had input into
16 the weight of them.

17 Generally what I heard an agreement
18 on, which you-all can tell me if this is true, is
19 that those that involve loss of life or environmental
20 issues should be the top priority. Then the third
21 priority seemed to be violation of policies.

22 COUNCIL CHAIR MR. TOM LITTLEPAGE: One
23 of the things, just for a point of clarification,
24 Dave would normally do a thumbs up or thumbs down
25 maybe for the purpose of developing a sense of the
1 majority of the commission. 77

2 As Joann goes over these points if you
3 agree or disagree, maybe at the appropriate times
4 we'll just do a thumbs up or thumbs down just to make
5 sure we're in line with the wishes of the consensus
6 of the group.

7 FACILITATOR JOANNE LAVENDAR: Okay.

8 So I think the first two go together there, consider
9 a true weighting system, some should be weighted more

10 heavily than others.

11 The second one is consider loss of
12 life and environmental issues as top priorities, and
13 then blatant policy noncompliance.

14 Would you-all agree with those two
15 statements? Thumbs up? Thumbs down?

16 Thank you. A positive feel there.

17 Okay. Consider impacts on public
18 access, would you agree that that would be a
19 consideration which was not a factor that was
20 involved earlier? Can I have a thumbs up or a thumbs
21 down as a factor that would be considered?

22 Thank you.

23 Incorporate liability protection for
24 TVA in permit conditions. I think maybe Buff
25 clarified that the docks are private property so that
1 when those permits are issued that is handled, is
2 that --

3 MS. BUFF CROSBY: It's probably okay
4 to, you know, see if they want -- we need to look to
5 see, but it may be okay to go ahead and add that.

6 FACILITATOR JOANNE LAVENDAR: Okay.

7 Incorporate liability protection for TVA and permit

8 condition.

9 Thank you.

10 Consider cumulative impacts of
11 infractions, what one gets away with others will
12 follow. I heard a lot of confirmation about that
13 concept.

14 Consider the mandates from Congress or
15 violation of federal laws in the prioritization
16 methodology.

17 Thank you.

18 Pursue environmental issues and being
19 on TVA land without permission first before going
20 after oversized boathouses. So I think that's --

21 DFO MS. ANDA RAY: It's already part
22 of the weighting issue.

23 FACILITATOR JOANNE LAVENDAR: It's
24 already part of the weighting. Another additional
25 one that was added, consider neighbor public

1 complaints in prioritization process. So add that to
2 prioritization.

3 Thumbs up? Thumbs down? Okay. Thank
4 you.

5 Consider tackling these on a

6 project-by-project approach, believe this would allow
7 TVA to better focus resources on the problem.

8 DFO MS. ANDA RAY: I actually need
9 clarification on that one. Is it
10 reservoir-by-reservoir or prioritization category by
11 prioritization category?

12 COUNCIL CHAIR MR. TOM LITTLEPAGE: My
13 intention was reservoir-by-reservoir or
14 watershed-by-watershed. In other words, it was
15 trying to get geographically focused so that the
16 neighbors -- you know, this whole issue of why are
17 you doing this one versus this one, you're doing a
18 focused effort to try to fix as much as you can of
19 the high priority problems before you go on as
20 opposed to just doing a little bit at a time and then
21 the neighbors say, well, how come this one is allowed
22 and getting to go through and this one is not.

23 So it's just looking at those that you
24 can resolve and trying to make an effort to do them
25 to eliminate that neighbor-versus-neighbor kind of
1 issue. 80

2 MR. GEORGE KITCHENS: It also helps
3 with what has been the past practice on each

4 reservoir because we heard, you know, boathouses
5 don't really happen a lot on Kentucky Lake but they
6 do obviously in other places. So it let's you get a
7 little consistent on a reservoir-by-reservoir basis.

8 DFO MS. ANDA RAY: Let me make sure
9 that if we're doing 30 or 40 a year that we may never
10 get to the other 12 of 13 reservoirs for a couple of
11 years and now you're talking about 12 or 13 years to
12 get -- I'm not sure that's what you're saying.

13 MR. W. C. NELSON: No. I think we
14 need to stick with the original plan of prioritizing
15 rather than trying to go to a project and concentrate
16 in one area. I just don't think we can be effective
17 over the whole Valley. You're going to have some
18 problems other places that you're not taking care of
19 if you're focusing on one project.

20 COUNCIL CHAIR MR. TOM LITTLEPAGE: I
21 understand that. My intention was the higher
22 priority. In other words, it's like a tier system.
23 You're looking at those that are core mission issues,
24 liability issues, loss-of-life issues, and those
25 would be the ones that you could go after.

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1 DFO MS. ANDA RAY: Everywhere?

2 COUNCIL CHAIR MR. TOM LITTLEPAGE: To
3 the degree you could focus on collectively doing as
4 many as possible in one location. I don't know if --
5 you know, if 30 to 40 is a fixed level of efforts
6 given staff limitations and funding limitations that
7 you can do, I would just think there's -- you know,
8 Arthur alluded to the boathouse issues versus others,
9 you would want to address those that have the
10 priority we have talked about.

11 We have said there is a weighted
12 approach in terms of factoring. You know, if you
13 look at this list all -- some of these are relatively
14 low but attack them with as much of a focused effort
15 as you can. So maybe there's not a consensus to do
16 that. It appears maybe --

17 MR. KENNY DARNELL: If we were going
18 to do 1500 to 2000 a year, I think that would be the
19 way to go, but when you're talking 30 to 40 that
20 would be problematic to focus on one -- like I say,
21 you could spend five years at one reservoir while
22 everyone else is running wild.

23 COUNCIL CHAIR MR. TOM LITTLEPAGE: It
24 was never my intention to clean every one up on a

25 year-by-year -- I mean project-by-project basis.

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1 MR. KENNY DARNELL: I didn't think
2 that's what you were talking about.

3 MR. BILL FORSYTH: If you were going
4 to attack oversized boathouses, would it not make
5 sense to get everyone on a particular lake at the
6 same time rather than get one at a time, one one year
7 and one the next?

8 DFO MS. ANDA RAY: It's just
9 resources. That includes litigation as well, you
10 know, because those will take a couple of years or a
11 year per case.

12 SENATOR ARTHUR ORR: The likelihood of
13 having those eggs thrown at the TVA office would be
14 less if you have dispersed the enforcement across the
15 whole Tennessee Valley as opposed to going after one
16 watershed or reservoir where you've got a whole bunch
17 of group -- a whole group of folks all up in arms.

18 MR. W. C. NELSON: They could get
19 organized easier.

20 SENATOR ARTHUR ORR: That's right.
21 They could get the pitchfork and knives. So you do
22 the divide and conquer.

23 FACILITATOR JOANNE LAVENDAR: Let's
24 see what the feel of the Council is on this one
25 again.

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1 Consider tackling these on a
2 project-by-project, meaning on reservoir-by-reservoir
3 or watershed-by-watershed approach.

4 Thumbs up or thumbs down on that one?

5 More discussion?

6 MR. RUSSELL TOWNSEND: I want to make
7 one more comment, if I could. I don't have enough
8 information on the way TVA forces these issues to
9 know what would be best.

10 I certainly see utility in
11 prioritizing these things and going after those
12 resources in a priority manner across the Valley,
13 but, you know, if TVA is really only doing 30 or 40
14 enforcement issues a year anyway --

15 DFO MS. ANDA RAY: We're not doing
16 that many.

17 MR. RUSSELL TOWNSEND: It might be
18 appropriate to look at it on a reservoir-by-reservoir
19 basis. I don't -- I don't think you're really losing
20 anything because I don't think you have got people

21 getting away at Guntersville with something that they
22 are -- you know, with something that's being brought
23 into check at another reservoir anymore under one
24 system than the other. So TVA would have to answer
25 that, I think.

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1 FACILITATOR JOANNE LAVENDAR: So you
2 don't think it should be a recommendation from this
3 Council, was that your comment?

4 MR. RUSSELL TOWNSEND: I think it --
5 if TVA thought they could better focus resources and
6 better utilize their resources on a very specific
7 geographic location as opposed to Valley-wide, then I
8 think it might be worth trying.

9 If on the other hand they have got
10 their resources pretty much scattered and it's pretty
11 much evenly distributed, then probably that kind of
12 reorganization for a reservoir-by-reservoir focus
13 would not be as useful.

14 FACILITATOR JOANNE LAVENDAR: So in
15 terms of whether you want this to be a recommendation
16 included from the Council, considering tackling these
17 on a reservoir-by-reservoir approach, thumbs up or
18 thumbs down?

19 MR. RUSSELL TOWNSEND: Based on the
20 information I have.

21 FACILITATOR JOANNE LAVENDAR: Okay.
22 That is a majority of thumbs down. Joe seems not
23 sure what we're discussing or trying to vote on.

24 MR. JOE SATTERFIELD: I think I was
25 kind of like Russell, I don't know how staff can do
1 it, you know. What's their opinion, you know? I 85
2 know y'all are looking for direction from us, but
3 what's practical I think enters into it.

4 DFO MS. ANDA RAY: And it's got to
5 come from them.

6 FACILITATOR JOANNE LAVENDAR: I didn't
7 get a majority vote on that one. Let's see. We have
8 already gone -- focus on -- we did that one. Thank
9 you.

10 So then moving on, how should TVA
11 communicate to the public about these issues?
12 Positively. Clearly label TVA lands and
13 rights-of-way so people know where they are.

14 Thumbs up or thumbs down on that?

15 Okay. That's a yes.

16 Make sure -- is positively a yes? I

17 heard that a lot.

18 Make sure communication includes
19 understanding of what is going to happen. Thank you.

20 Be consistent, have both compassion
21 and common sense.

22 MRS. JEAN ELMORE: Yes.

23 FACILITATOR JOANNE LAVENDAR: Good
24 philosophy there. Use cross-agency communication.
25 TVA should apprise counties of regulations so that
1 they understand not to permit septic systems on TVA⁸⁶
2 property. That would be an example of using
3 cross-agency communication. Okay. Use those
4 resources. That was a yes.

5 MR. GEORGE KITCHENS: Adding into
6 that --

7 FACILITATOR JOANNE LAVENDAR: Oh,
8 would you like to?

9 MR. GEORGE KITCHENS: -- your
10 distributor community as well because we may not want
11 to hook power up to something that didn't have all
12 the ducks lined up and without power --

13 MRS. JEAN ELMORE: They can't do much
14 without power.

15 MR. GEORGE KITCHENS: -- except for
16 running generators and stuff like that they are maybe
17 not going to put the 5,000 square foot home on your
18 property or something.

19 COUNCIL CHAIR MR. TOM LITTLEPAGE: All
20 right. Good point.

21 FACILITATOR JOANNE LAVENDAR: Let's
22 look at that revised statement. Use cross-agency
23 communication. TVA should apprise counties and
24 distributors of the regulations so that they could
25 understand.

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1 Is that yes or no?

2 COUNCIL CHAIR MR. TOM LITTLEPAGE: All
3 right. Could we just say water and power
4 distributors?

5 FACILITATOR JOANNE LAVENDAR: Water
6 and power distributors.

7 Thank you.

8 Licensed requirement for boat dock
9 builders before they would be allowed to construct on
10 TVA reservoirs.

11 COUNCIL CHAIR MR. TOM LITTLEPAGE: I'm
12 not sure.

13 FACILITATOR JOANNE LAVENDAR: Some
14 discussion on that one?

15 COUNCIL CHAIR MR. TOM LITTLEPAGE: Are
16 we talking about -- who are we talking about license?

17 FACILITATOR JOANNE LAVENDAR: The
18 person that gave that recommendation, do you want to
19 elaborate?

20 MR. KENNY DARNELL: What I was talking
21 about is anyone who would build waterfront structures
22 or structures that would be floating on the water you
23 would institute a licensing procedure for those
24 people so that you could make sure that they had the
25 information in hand on what they could and couldn't
1 do on TVA reservoirs before they would be permitted
2 to build things for people on those reservoirs.

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3 FACILITATOR JOANNE LAVENDAR: Kelly,
4 did you have a comment?

5 MS. KELLY LOVE: We might be on shaky
6 legal ground there.

7 MR. KENNY DARNELL: That's common
8 ground for some of us.

9 SENATOR ARTHUR ORR: That's our
10 comfort zone.

11 MR. GEORGE KITCHENS: What do you
12 think is shaky about it? It's not TVA endorsing only
13 builder one or builder two.

14 MS. KELLY LOVE: I mean, that's a
15 concern probably not only from a legal perspective
16 but also from a stakeholder perspective, I would
17 think. I mean, TVA, our powers are sort of confined.
18 I'm just not quite sure that that -- we can regulate
19 the river system, but that's sort of to me probably
20 stepping beyond regulating the river system and just
21 something that's probably more of a local or state.

22 MR. GEORGE KITCHENS: I don't think --
23 I'm obviously practicing shade-tree law here, but to
24 the extent that a structure being built in the water
25 that TVA manages is a threat to navigation and to the
1 environment, you have every right to regulate what
2 goes on and in that waterway.

3 DFO MS. ANDA RAY: Which is different
4 from licensing the builder.

5 MR. WES ROSENBALM: But not issuing
6 the permit.

7 DFO MS. ANDA RAY: But not issuing the
8 permit. So we can say that what you build, here's

9 the rules for what you need to build, we can give
10 them that. Licensing a builder, I don't know, but we
11 want to capture your concept.

12 UNIDENTIFIED SPEAKER: You have to
13 have a licensed electrician to wire a home. Why
14 can't you have a licensed TVA contractor to build on
15 their property?

16 DFO MS. ANDA RAY: It's the licensing
17 of a contractor that's the issue, us licensing under
18 what authority.

19 FACILITATOR JOANNE LAVENDAR: Okay.
20 Looking at this as it stands, or if you want to make
21 a revision, but looking as it stands, license
22 requirement for boat dock builders before they be
23 allowed to construct on TVA reservoirs.

24 Thumbs up or a thumbs down?

25 I didn't see all of these over here.
90
1 Okay. So there's not a majority positive. So that
2 would be a negative.

3 MR. GEORGE KITCHENS: What if we
4 change it to certify?

5 FACILITATOR JOANNE LAVENDAR: Okay.
6 What about certify requirement? Would you like to

7 say a little bit about that?

8 MR. GEORGE KITCHENS: Certification of
9 the contractor that might build boat docks or
10 whatever we're talking about here. That way they
11 could certify to any residential person that might
12 want a dock built that I am a trained professional
13 and knowledgeable of all the regulations that we have
14 to comply with or something. It's like using a CPA.

15 MR. W. C. NELSON: That should be a
16 county requirement or a state requirement as far as
17 building codes. TVA shouldn't be involved in
18 designating who can build.

19 COUNCIL CHAIR MR. TOM LITTLEPAGE: And
20 you have got -- you have got a built-in conflict of
21 interest with a contractor who has a client saying I
22 want you to build a 3,000 square foot boathouse and
23 TVA says you shouldn't but he's got a profit
24 incentive.

25 I mean, it puts the contractor in a
1 very difficult position saying, no, I don't want 91
2 your money because I am going to make sure this is in
3 compliance. I just think it's a very difficult
4 process.

5 There could be opportunities to do
6 training or education with industry groups and
7 associations, you know, contractor groups that --
8 there is a trade association, just take the
9 opportunity, again, for communication and take the
10 opportunity to present TVA's standards and policies.

11 FACILITATOR JOANNE LAVENDAR: Would
12 you want to change it to that?

13 MR. GEORGE KITCHENS: I will pass.

14 FACILITATOR JOANNE LAVENDAR: Would
15 you want to add something about communication? I
16 guess that's --

17 COUNCIL CHAIR MR. TOM LITTLEPAGE: We
18 have covered communication there.

19 FACILITATOR JOANNE LAVENDAR: Yeah, we
20 have. So consider a TVA certification requirement
21 for boat dock builders who construct water-use
22 facilities on TVA reservoirs?

23 Even George says no. Thank you.

24 MR. GEORGE KITCHENS: That's the
25 politically correct thing. I was for it before but
1 voted against it. 92

2 FACILITATOR JOANNE LAVENDAR: Utilize

3 lake associations in communications. Continually
4 reinforce the problems and TVA procedures.

5 Yes or no? Yes. That was a yes.

6 Act in the public trust. Convey to
7 communities that enforcement of these issues is for
8 the public good. Yes.

9 Consider utilizing building inspectors
10 to sign off to ensure facilities meet code.

11 COUNCIL CHAIR MR. TOM LITTLEPAGE: I
12 think I heard that this was TVA staff. I forget who
13 made this comment. Wasn't it relative to having TVA
14 sort of inspect their permitting process?

15 MR. RUSSELL TOWNSEND: And I didn't
16 know if it would be something separate from lakeshore
17 management or if it would just be those individuals
18 who would be responsible, but I guess what I was
19 suggesting is if you issue a permit for a 1800 square
20 foot boat house, at the 18 months go out and make
21 sure it's an 1800 foot square boat house, and if it's
22 not, then act on it then.

23 The problem is if you issue a permit
24 on an 1800 foot boat house and nobody complains and
25 you don't find out for ten years that it's really a

1 3200 foot boat house.

2 FACILITATOR JOANNE LAVENDAR: So it's
3 really meeting TVA standards when you say meeting the
4 code?

5 DFO MS. ANDA RAY: In a timely manner.

6 FACILITATOR JOANNE LAVENDAR: In a
7 timely manner.

8 COUNCIL CHAIR MR. TOM LITTLEPAGE: I
9 was thinking of this context in terms of even having
10 the watershed teams aware of pending permits and the
11 opportunity to go out and look and see if there's
12 anything wrong while you're in the midst of
13 construction so that you can better -- if somebody is
14 willing to mitigate it, they may be doing it there
15 versus after it's built and having to undo something.

16 MR. RUSSELL TOWNSEND: Absolutely.

17 COUNCIL CHAIR MR. TOM LITTLEPAGE: It
18 puts a burden on TVA staff.

19 FACILITATOR JOANNE LAVENDAR: I am
20 waiting for the new wording. Just a moment.

21 MR. W. C. NELSON: I guess the
22 question on that is, what is the code?

23 FACILITATOR JOANNE LAVENDAR: Yeah,

24 that's what I was clarifying. Is that the TVA
25 policy, permitting -- is it the TVA permit
1 requirements?

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2 MR. RUSSELL TOWNSEND: Yes.

3 MR. W. C. NELSON: You're going TO
4 look at the footprint only --

5 MR. RUSSELL TOWNSEND: TVA permitting.

6 MR. W. C. NELSON: -- and the
7 enclosures is all you're going to be looking at.

8 MR. RUSSELL TOWNSEND: So if they say
9 you can you can build your boat ramp but you have to
10 build it up, that there can be no subsurface ground
11 disturbance and then you get out there and see that
12 they have dug it into the ground, then you can say,
13 uh-oh, this wasn't in compliance with the permit and
14 we're going to have to adjudicate this issue.

15 It doesn't have anything to do with
16 size or square footage. It has to do with obeying
17 the rules that TVA sets forth in the permit.

18 DFO MS. ANDA RAY: But I think the
19 clarification is it has to do with the permit which
20 is -- which does have size, depth, can you do
21 shoreline stabilization. It doesn't say, did you use

22 the right building materials? Is it a safe
23 construction? Are the -- is the electrical hooked up
24 right? It has nothing to do with that.

25 MR. RUSSELL TOWNSEND: That's right. 95

1 FACILITATOR JOANNE LAVENDAR: Okay.
2 Nancy, if you would add TVA permit compliance to make
3 sure we're very clear.

4 MR. RUSSELL TOWNSEND: I think the
5 confusion was I said building inspector because I
6 didn't know, you know, how to term it in TVA
7 language.

8 FACILITATOR JOANNE LAVENDAR: Now, the
9 recommendation is consider inspecting construction of
10 new water use facilities in a timelier manner to
11 ensure TVA permit compliance. Yes or no? Thumbs up
12 or thumbs down. That was a yes from the Council.

13 Enforcement has been lax. The public
14 would accept adherence to regulations if they were
15 applied fairly and across the board. I guess that's
16 a recommendation to apply them fairly and across the
17 board. That was a yes.

18 Follow up with compliance checks on
19 new construction. That's part of the earlier one.

20 COUNCIL CHAIR MR. TOM LITTLEPAGE: I

21 think that's the same point.

22 FACILITATOR JOANNE LAVENDAR: Start
23 with the worst ones first. For example, target the
24 boat dock builder building the larger boathouses in
25 violations of permit.

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1 DFO MS. ANDA RAY: That goes back

2 to --

3 FACILITATOR JOANNE LAVENDAR: That was
4 covered under our earlier prioritization. Okay. So
5 we don't need a separate on that.

6 TVA's lack of enforcement has helped
7 create the problem. The message needs to come from
8 the top.

9 COUNCIL CHAIR MR. TOM LITTLEPAGE: We
10 are continuing to re-echo consistency.

11 MR. KENNY DARNELL: Yes, I think
12 that's redundant.

13 FACILITATOR JOANNE LAVENDAR: That's
14 redundant is what you're saying?

15 MR. KENNY DARNELL: Yes.

16 DFO MS. ANDA RAY: It's not with me.

17 FACILITATOR JOANNE LAVENDAR: Not with

18 you because the message from the top?

19 DFO MS. ANDA RAY: What you said was,
20 hey, this is a new day, the sun is shining and the
21 Board needs to say they are behind us and this
22 approach, that if they come to them they are not
23 going to overturn it back to the credibility of trust
24 issue. Well, they could overturn it if there's new
25 data.

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1 FACILITATOR JOANNE LAVENDAR: So maybe
2 we need to say the message needs to come from the TVA
3 Board or needs to be supported from the TVA Board, is
4 that the concept?

5 TVA's lack of enforcement has helped
6 create the problem. The message needs to be
7 supported by the TVA Board. Thumbs up? Thumbs down?
8 Thank you. Yes.

9 Consider grandfathering. Was there
10 something more specific on that recommendation?

11 COUNCIL CHAIR MR. TOM LITTLEPAGE: I
12 don't remember that discussion.

13 MR. W. C. NELSON: Does that mean
14 things that are out of compliance to grandfather them
15 in?

16 MR. KENNY DARNELL: I spoke to that
17 pretty much just in general, just general commentary,
18 I don't know that there's any recommendation there.

19 FACILITATOR JOANNE LAVENDAR: Okay.
20 So thumbs up or thumbs down on adding that? Okay.
21 We're getting the thumbs down and that it's not a
22 specific recommendation.

23 COUNCIL CHAIR MR. TOM LITTLEPAGE: I
24 would attribute that back to the common
25 sense/compassion component of the policy.

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1 FACILITATOR JOANNE LAVENDAR: Right.
2 That would be one of the options or avenues. Thank
3 you.

4 MR. KENNY DARNELL: The same for this
5 one too, I believe.

6 FACILITATOR JOANNE LAVENDAR: Okay.
7 From this point on address, pursue time forward.
8 Okay. Take out.

9 Enforcement will require a lot of
10 resources. Consider utilizing the inspector idea.

11 MR. KENNY DARNELL: That supports the
12 one that we --

13 FACILITATOR JOANNE LAVENDAR: That was

14 the one we've already addressed in terms of
15 inspector.

16 Consider requiring an annual payment
17 or a fine to TVA violations such as oversized
18 boathouses. So we had several discussions on that.

19 Would you say thumbs up or thumbs down
20 or more discussion first?

21 Tom or Russell.

22 MR. RUSSELL TOWNSEND: I would like to
23 say that I think the revenue stream idea is a good
24 idea because it might allow TVA to go out and do
25 more, but it also seems like you're giving a pass to
1 individuals who can afford to pay the fine unless⁹⁹
2 it's just, you know, an ungodly fine, and I'm not
3 sure that could legally be done. I would think
4 lawsuit --

5 MR. GEORGE KITCHENS: Russell, it's no
6 difference than our income tax system in the country
7 where some people that work and don't earn much money
8 don't pay taxes at all and get a check back from the
9 government and where people that earn more pay a
10 larger share of the taxes in the country.

11 So we're using funding from people

12 that can afford to contribute to the system to help
13 with our enforcement efforts.

14 MR. KENNY DARNELL: This almost is,
15 you know, of paying indulgences.

16 MR. RUSSELL TOWNSEND: I agree with
17 what George says absolutely, but I'm against it.

18 FACILITATOR JOANNE LAVENDAR: Okay.
19 Let's see how the Council feels about this. Consider
20 requiring an annual payment or fine to TVA for
21 violations. An example is an oversized boathouse.

22 Thumbs up or thumbs down?

23 Okay. That one was a no.

24 May need to take more severe action if
25 fines do not resolve the issue. Well, that was
1 related to the earlier one, wasn't it? 100

2 Make the penalty hurt to deter future
3 V&E's. Was that again a part of that? All right.
4 That one I am getting some yeses on.

5 Make the penalties, whatever they are,
6 hurt to deter future V&E's. I am getting a yes on
7 that.

8 Address V&E's or you risk
9 proliferation and you risk more liability. Draw a

10 line in the sand and ensure consistency from here on
11 out. I think that was a yes. It was related to
12 earlier ones but good to reinforce.

13 Consider doing what the Corps does,
14 charge a fee for every day not in compliance.

15 MR. W. C. NELSON: That's really part
16 of the previous one.

17 FACILITATOR JOANNE LAVENDAR: That's a
18 part of the previous one and so you don't want to add
19 that one. Okay. Delete that one.

20 Now, other general recommendations.
21 Consider that when you grandfather something in you
22 have to --

23 SENATOR ARTHUR ORR: Could we go back?

24 FACILITATOR JOANNE LAVENDAR: Yeah.

25 Sure. Let's go back.

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1 SENATOR ARTHUR ORR: I think that was
2 George's. Could you not say during the appeals
3 process and then if they successfully appeal, then
4 that fee is waived?

5 FACILITATOR JOANNE LAVENDAR: Okay.

6 This is really relating to the appeal process,
7 consider charging a fee for the appeal, during the

8 appeal process.

9 MR. KENNY DARNELL: That's what we
10 said on that was, you know, during the appeals
11 process, that if you did not prevail, then that would
12 be --

13 SENATOR ARTHUR ORR: It would be
14 waived if you won even.

15 MR. KENNY DARNELL: That just takes
16 that other one a little bit more specifically down to
17 where the fines would be to a point to where it could
18 hurt you.

19 SENATOR ARTHUR ORR: The fines could
20 go on in perpetuity, I mean, years, but the appeals
21 process to make sure people weren't just delaying and
22 just sending that 42 cent letter in to delay an
23 appeal that there is some per diem charge for every
24 day they are not in compliance, is that -- George,
25 was that your -- you know, it's up to you.

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1 MR. GEORGE KITCHENS: I think it was
2 actually Kenny's, but I think it makes sense.

3 MR. RUSSELL TOWNSEND: I think it
4 would have an impact on frivolous appeals.

5 FACILITATOR JOANNE LAVENDAR: So

6 during the appeals process consider doing what the
7 Corps does, charge a fee for every day not in
8 compliance?

9 SENATOR ARTHUR ORR: With the
10 understanding that if you prevail it's waived.

11 FACILITATOR JOANNE LAVENDAR: So you
12 might say if you prevail it's waived. Okay. Is that
13 a thumbs up or a thumbs down? That's a thumbs up.
14 Majority.

15 Now, the general recommendations and
16 considerations, consider that when you grandfather
17 something in you have to deal with the problem for
18 the next 50 years, which is a comment.

19 COUNCIL CHAIR MR. TOM LITTLEPAGE: I
20 think you just have to consider it carefully when you
21 grandfather stuff in.

22 FACILITATOR JOANNE LAVENDAR: Okay.
23 Carefully grandfather something in, if we rewrote it
24 that way as a recommendation, carefully grandfather
25 something in as you have to deal with the problem for
1 next 50 plus years. 103

2 MR. JOE SATTERFIELD: Didn't we
3 already say we were not going to grandfather?

4 COUNCIL CHAIR MR. TOM LITTLEPAGE: I
5 think what we said was they would have latitude, you
6 know, that you want to limit what you grandfather, I
7 think, but you don't want to completely categorically
8 exclude the option.

9 MR. KENNY DARNELL: This is just a
10 general recommendation kind of thing.

11 DFO MS. ANDA RAY: Let me -- when you
12 grandfather something in, that means that a rule
13 changed and now -- the bar moved and you're no longer
14 in compliance, those are the ones that get
15 grandfathered in, you don't grandfather in somebody
16 who violates something that's been in effect, that's
17 a waiver?

18 MR. KENNY DARNELL: Right.

19 DFO MS. ANDA RAY: So we're talking
20 about the rule changed and somebody got left
21 standing?

22 MR. KENNY DARNELL: Right.

23 FACILITATOR JOANNE LAVENDAR: So
24 carefully consider that when you grandfather

25 something in due to a rule change you have to deal
104
1 with the problem for the next 50 plus years. Yes or

2 no? Thumbs up or thumbs down? That was a yes.

3 Not addressing the small problems in
4 the past has caused them to grow, getting a handle on
5 that will stop the proliferation. Would you say yes
6 or no to that comment? That was a yes.

7 You have to undertake this with the
8 full support of the Board so that you don't put staff
9 in the position of being overturned during the
10 enforcement process. That can be added to that other
11 comment. That was a yes.

12 Should we charge people during an
13 appeal? Consider charging on a cost table that
14 varies by the type of issue. Okay. That's a yes.

15 Charging for appeals would not be
16 effective. Enforcement is the answer. Consider
17 doing what the Corps does. Now, this is what we
18 addressed earlier. So should we use our earlier
19 statement? Okay.

20 Another suggestion is make the
21 appellant appear in person, that would help the
22 process be a little less frivolous. Yes or no?
23 Thumbs up? Thumbs down? I'm not sure I have enough
24 thumbs up. Let's see. Yes. That was a yes. Thank

25 you.

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1 Consider limiting appeals to one and
2 then offer the appellant the opportunity to go to the
3 Board and charge them for this limited -- limited and
4 charge them for this. I think that was addressed
5 earlier in charging.

6 COUNCIL CHAIR MR. TOM LITTLEPAGE: I
7 think we talked about limited or defining an appeal
8 process and somebody had thrown out the idea of just
9 having a one-step appeal. I remember throwing out
10 two. I like the idea of limiting the process, but I
11 think ultimately the Board has the ultimate
12 responsibility and you have to provide that vehicle.
13 So I would propose one to the formal TVA structure
14 and then a final appeal to the Board.

15 MR. GEORGE KITCHENS: I just have a
16 question about it. With the restructuring of the
17 Board and the new role that they are assuming, is
18 this a function of the new Board or does it stay at
19 the management level?

20 FACILITATOR JOANNE LAVENDAR: Anda.

21 DFO MS. ANDA RAY: Currently there's
22 three appeals. The watershed team makes the

23 decision. They appeal to me. They appeal to Tom
24 Kilgore. Then they appeal to the Board. The Board
25 does not have to hear it. It's just like the Supreme
1 Court, they can choose to let it sit for 60 days and ¹⁰⁶
2 then the CEO's decision stands. So there's three
3 levels there. I didn't answer your question on
4 whether --

5 MR. W. C. NELSON: I think that's a
6 good process.

7 COUNCIL CHAIR MR. TOM LITTLEPAGE: I
8 think that's probably adequate.

9 MR. RUSSELL TOWNSEND: I think it's
10 two too many myself personally.

11 MR. KENNY DARNELL: I think basically
12 all we wanted to say there was just to limit -- try
13 to limit the appeals process. Do we want to get
14 specific about how we want to limit the appeals
15 process or is that beyond our scope?

16 COUNCIL CHAIR MR. TOM LITTLEPAGE: And
17 I -- if I can summarize, what we've thrown out is the
18 idea that you are faced with a penalty during the
19 appeals process, we have suggested that, and then I
20 think we approved the idea of you having to appear in

21 person in this thing.

22 Is that enough or is that -- you know,
23 I think that's where we are right now with this
24 issue.

25 MR. WES ROSENBALM: You're going to
1 get a charge -- 107

2 MR. RUSSELL TOWNSEND: Are we going to
3 get into a situation where my septic system intrudes
4 on TVA land and so it's appealed at the first level
5 and TVA says, no, you know, that's an environmental
6 risk and it's a liability and we can't have it and so
7 you have got to get it off there.

8 So then they appeal at the CEO level
9 and the CEO says the same thing and then they appeal
10 at the Board level and the Board is like, well, you
11 know, this is a liability and environmental risk,
12 but, look, if we don't overturn -- if we don't
13 support this appeal, then this poor individual is
14 going to have to pay fines of, you know, \$32,000 for
15 the length of time this thing has gone off because of
16 the per diem amount. So let's show compassion and,
17 you know, uphold this appeal. I'm not sure if it
18 really bodes well for consistency to do both things

19 there.

20 MR. GEORGE KITCHENS: And I will admit
21 by my comment about is this a Board function that I
22 was trying to limit the appeal process to people that
23 actually might be aware of what they are dealing with
24 rather than sending it to the Board.

25 The Board, while they are great people
1 and have diverse backgrounds, they don't live this ¹⁰⁸
2 everyday like the staff here does and like the CEO
3 might be expected to know about.

4 DFO MS. ANDA RAY: I did want to
5 clarify one thing. When I said it went to the Board,
6 it currently goes to the Board committee and they can
7 choose to hear it, which is only a -- which is the
8 four people that I mentioned that oversee this. It's
9 not the entire Board.

10 FACILITATOR JOANNE LAVENDAR: So do
11 you want to have a statement that says, consider
12 limiting the number of levels of appeals within TVA,
13 is that --

14 DFO MS. ANDA RAY: Let me give them --
15 and you need to help me with the numbers a little
16 bit. 2600 26(a) permits a year. The number of

17 appeals is around --

18 MS. VICKIE ELLIS: 26 appeals.

19 DFO MS. ANDA RAY: 26 appeals. So
20 .1 percent. Then the ones that have gone beyond me
21 have been around 10 and one has been overturned or
22 two.

23 MS. VICKIE ELLIS: Resolved. I don't
24 think they were overturned.

25 DFO MS. ANDA RAY: One has been
1 overturned out of 2600. So that's the level of 109
2 volume we're talking about.

3 MR. KENNY DARNELL: Again, if we're
4 going to stay at that kind of level that works, but
5 if we're assuming that we're going to tackle 4300 of
6 them this year, then you're going to be swamped with
7 a process.

8 MR. W. C. NELSON: Let's not fix
9 something that's not broken.

10 MR. KENNY DARNELL: That's wise.

11 FACILITATOR JOANNE LAVENDAR: Okay.
12 Do you want to leave this statement as it stands,
13 consider defining the appeals process to limit
14 appeals to one for the formal TVA Board structure and

15 then one to the TVA Board? That's a no.

16 Okay. Consider putting appeals in the
17 Federal Court arena.

18 MR. KENNY DARNELL: That -- yeah,
19 that's completely out of our hands there.

20 FACILITATOR JOANNE LAVENDAR: Okay.
21 So that's a no.

22 Consider using arbitration in the
23 appeals process. That's a no.

24 Consider working a stakeholder group
25 into the appeals process. Utilize a group
1 representing each reservoir so they would understand
2 and address the issues unique to each reservoir.
3 Okay. That's a no.

4 DFO MS. ANDA RAY: Do we have
5 anonymous voting or something new?

6 MR. JOE SATTERFIELD: I thought we had
7 a problem.

8 FACILITATOR JOANNE LAVENDAR: Do you
9 feel that these recommendations here have captured
10 the recommendations that you had during the
11 discussion?

12 Okay. Let's do a thumbs up or a

13 thumbs down on that? Okay. I see a thumbs up.

14 Okay. Thank you. So, Tom, I will go
15 to you for what's next.

16 COUNCIL CHAIR MR. TOM LITTLEPAGE: All
17 right. I guess I would turn to the staff and say, do
18 you feel like we have provided something that may
19 help you in your deliberations?

20 DFO MS. ANDA RAY: This has been
21 terrific. Thank you very much for engaging. Was
22 the -- I do want to ask, was the tour helpful in
23 being able to or being able to see how this was done
24 and how it was affected on the ground?

25 MRS. JEAN ELMORE: Yes.

1 MR. W. C. NELSON: Sure was. Very 111
2 good.

3 DFO MS. ANDA RAY: So we will try to
4 do more hands-on if it's applicable for the type of
5 issues that you address in the future then.

6 COUNCIL CHAIR MR. TOM LITTLEPAGE: Do
7 we have any public -- where is Beth? Do we want to
8 take maybe a quick break? Who's going to have to
9 leave? Is anybody going to have to leave maybe right
10 at the break?

11 We will go ahead and take about a
12 15-minute break and get together and kind of wrap up
13 where we're going, but I appreciate --

14 DFO MS. ANDA RAY: We have the TVA
15 video.

16 COUNCIL CHAIR MR. TOM LITTLEPAGE: We
17 have a couple of things to do here. I appreciate
18 your efforts with this process, and hopefully TVA can
19 use these as they move forward in this arena. We
20 will stand adjourned for about 15 minutes.

21 (Brief recess.)

22 COUNCIL CHAIR MR. TOM LITTLEPAGE: If
23 I could ask you to take your seats, we will start the
24 process of wrapping up this meeting.

25 SENATOR ARTHUR ORR: Mr. Chairman, I
1 would like to make a statement before we wind up. 112

2 Where is Anda?

3 I do think all of this enforcement
4 provides for the hiring of many, many more lawyers in
5 TVA. I think all problems will be solved if they
6 have a legal team.

7 COUNCIL CHAIR MR. TOM LITTLEPAGE: All
8 right. Because that's the track record, right?

9 SENATOR ARTHUR ORR: Now, Kim, don't
10 put this on the record. We have got to work out an
11 agreement over there.

12 COUNCIL CHAIR MR. TOM LITTLEPAGE: All
13 right. More lawyers, more resolutions. Okay.

14 SENATOR ARTHUR ORR: Let it be said
15 that was a very facetious statement.

16 COUNCIL CHAIR MR. TOM LITTLEPAGE: All
17 right. At this point, I guess, we have wrapped up
18 and we have agreed to the recommendations. I want to
19 thank those of you that have made -- I think W. C.
20 may have left and I know Carol is going to have to
21 leave in a minute.

22 Do you want to wrap up with regards to
23 the next meeting?

24 DFO MS. ANDA RAY: Yes. We thank you
25 very much. We mentioned yesterday that your terms
1 are up as of February 2009. We will be in contact
2 with each of you in the next few months.

3 The Board is planning on October 31st
4 to extend the Council's term for another two years,
5 but we will have to get back to you regarding your
6 individual memberships because there's some

7 individual issues there.

8 And with that, again, I reiterate that
9 you have been a fantastic board in one of the most
10 changing of times in all of TVA's history with the
11 change in governments the strategic plans, the river
12 operations study, the land policy, and definitely the
13 TVA environmental policy.

14 With that I'd really like to take just
15 about 15 more of your minutes and give you kind of a
16 brief visual of 75 years of TVA history and how I
17 think you will see that you have played a very
18 important part in something that's very well deeply
19 rooted in this area.

20 (Video playing.)

21 DFO MS. ANDA RAY: So we just want to
22 thank you for being part of that 75 years of history
23 because this has been really an active Regional
24 Resource Stewardship Council.

25 So with that, I don't think we have
1 any more business. 114

2 COUNCIL CHAIR MR. TOM LITTLEPAGE: Any
3 more comments in closing?

4 I just want to thank you. As Chairman

5 it's been a distinct privilege to serve this body.
6 We wouldn't have done what we did without your
7 involvement and input. So I certainly appreciate the
8 effort you've put forth in taking time out of your
9 very busy schedules to participate in this. I just
10 want to say a personal thank you for that. It made
11 my job a lot easier.

12 DFO MS. ANDA RAY: We want to thank
13 Tom.

14 COUNCIL CHAIR MR. TOM LITTLEPAGE: All
15 right. Any other comments?

16 With that, I would make a motion we
17 adjourn.

18 Jean.

19 MRS. JEAN ELMORE: I would just like
20 to say this has been a really good meeting and a fun
21 meeting. It's been just very enjoyable.

22 COUNCIL CHAIR MR. TOM LITTLEPAGE: All
23 right. Good comment. I echo those sentiments.

24 Thank you very much. Y'all have a
25 safe trip back.

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1 END OF PROCEEDINGS

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REPORTER'S CERTIFICATE

STATE OF TENNESSEE)
 : SS.
COUNTY OF HAMILTON)

I, Kimberly J. Nixon, RPR, the officer before whom the foregoing proceedings was taken, do hereby certify that the foregoing transcript was taken by me in machine shorthand, and thereafter reduced to typewriting by me;

That the transcript was prepared under my supervision, and attached to this certificate is a true, accurate and complete transcript, as provided by law;

That I am neither counsel for, related to, nor employed by any of the parties to this action; and I further certify that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action; and that the foregoing transcript is complete and accurate in all particulars, as provided by law.

In witness whereof, I have hereunto set my hand this_____day of_____, 2008.

KIMBERLY J. NIXON, RPR
COMMISSION EXPIRES 4/18/2012.

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